

Instructor Clericalis.

The Fifth and Last Part.

BEING A
CONTINUANCE
OF
BARS,
AND OTHER
PLEADINGS,
From the FOURTH PART.

WHEREIN
The BARS and PLEADINGS in Debt,
Detinue, Quare Impedit, Replevin, Trespass,
Trover, and Wast, are continued either
by Precedents of, or References to, all the
Pleadings extant respecting the same.

With Variety of Notes, Arguments, and other
Observations thereunto relating.

In Two Volumes.

VOL. I.

By R. G. a Clerk of the Court of *Common-Pleas*.

In the SAVOR:

Printed by J. Nutt, Assignee of Edward Sayer Esq;
for J. Walthoe in the *Middle-Temple Cloisters*, and at
his Shop in *Stafford*. 1713.

Inventor's Certificate

The Third and Last Part

BEFORE

COMMISSIONERS

OF PATENTS

IN GREAT BRITAIN



MUSEUM
BRITANNICUM

WOULD BE THE BEST

NECESSARY, AND THAT FOR YOUR

CONVINCING, TO THE

TWO VOLUMES, THE TABLE OF THE

READER.

THESE THINGS BEING

ING AT THE END OF THE LAST VOLUME:

WHEREBY IT WILL APPEAR

S I R,

HAving, at the End of the Fourth Part of *Instructor Clericalis* (in Bar al Debt sur Obl^p, which concludes with Bars as to Counterbonds to save harmless, &c.) referr'd the Readers to a *Fifth Part* then composing, in which I promised to give Satisfaction to the Subsequent Matters intended: I have, after much Labour and Care therein, compleated this *Fifth Part*, ending with Bars and Pleadings in Actions of Wast, as by the *Introduction* and *Table* will appear. And tho' I have been as brief and concise therein, as the Nature of such an Undertaking

To the Reader.

would permit; yet there was a Necessity, and that for your Conveniency, to divide it into Two Volumes; the Table of the several Heads, and Matter of Pleadings therein contain'd, being at the End of the last Volume: Whereby it will appear, that I have endeavour'd to perform my Promise, and that from the best of Modern Pleadings, Arguments and Authorities, intermixed also with Variety of References, &c. to those of the Ancients. I hope therefore you will favourably accept these my Endeavours, desiring you will also pardon the *Errata's* both of the Collector and Press, since *Nemo sine Crimine vivit*. I presume to subscribe my self,

Your Humble Servant,

R. G.

Instructor

Instructor Clericalis.

PART V.

IN the Fourth Part of *Instructor Clericalis*,
pag. 230. Bars in Debt are observed to
answer in such Particulars as follow,
viz.

1. Bar al' Debt,	Sur Recovery.	Sur Counter-
	Sur Recogn'.	bond. *
	Sur Bill.	Sur Obl' de Ar-
	Sur Obl' pur Payment,	bitrement.
	Sur Account.	Sur Obl' al'
	Sur Contract.	Vic'.
	Sur Emisset.	Sur Obl' de se-
	Sur Escape.	peralibus re-
	Sur Mutuatus	bus faciend'.
	Sur Arbitrement sans Specialty.	
	Sur Action pur Amerciament.	
	Sur Statutes, &c.	

Bar al Obl'

- Per Dures.
- Per Minas.
- Per Deins Age, & per Coverture.
- Per non est factum } For Raizure.
- } For Interlineation.
- } For Misreading, &c.
- 2. Bar al' Debt, } Per Ley Gager.
- } Per Defeasance, & per Release, & Acquittance.
- } Per Condition' perform'.
- } Per Delivery, & Acceptance, des auter Choses.
- } Per Tender.
- } Per Foreign Attachment.
- } Per Statute Ley.
- 3. Bar al' Debt, } Per Heirs.
- } Per Exec' & Adm', &c.
- } Al' Suit de Exec' & Adm', &c.

Yet the following Part of that Book would not conveniently permit to proceed any further than to

Bar al' Debt sur Counterbond. *

Here the Fifth Part begins.

We must now therefore proceed in Order, beginning at Bar in Debt, *Al Obl' sur Arbitrement*, &c. and afterwards look into the other general Heads; as,

- Bar in Detinue.
- Bar in Quare Impedit.
- Bar in Replevin.
- Bar in Trespass.
- Bar in Trover: And,
- Bar in Waste.

And so draw this Fifth and most Concise Part to a Conclusion.

Bar

Bar al Obl' sur Arbitrement.

¶ **D**Ebt sur Obl' obe Condition al per-
former Arbitrement, Bar p nul-
lum fecer Arbitrium, Nepl p Arbitrium
fac' & ptestando qd Def' non pformabit
aliqua p placito non solvit denar', Nejo'
qd nullum ele fecer Arbitrium, Rast.
Ent. 153. Winch. Ent. 302, 318. Thomps. 155.
Silis Nepl sine ptestac' & silis Nejuna',
Rast. 154. 3 Brownl. 143. Rast. Ent. 240. Winch.
Ent. 174.

¶ Qd scriptum elem in se continet
Conditionem qd, &c. de Arbitrio pfor-
mand', Et sic placitat' ad inde sine peti-
tione audit' Condition', Rast. Ent. 154, 155.

¶ Qd Arbitrator' fecer script' Arbit-
rii Indentat' modo & forma sequen',
Et plead performance de ceo special-
ment, Ec. Placit' Gen. 247.

¶ Qd Arbitratores nullum fecer
Arbitrium, Et qd C. un' Arbitrator'
obiit infra tempus, Et qd Defend' & alii
diligent' laboraver' Arbitratores ad Ar-
bitrium fac', Nepl ptest' qd non labora-
ver' p placito qd pdict' C. fuit supstes in
Festo, Et traverse qd obiit ante Festum,
Et Exit' sur le Traverse, Rast. Ent. 154.

¶ Qd C. & un' M. qui non fuit de
ejus Consilio fec' Arbitrium quod Def'
pformabit genaliter, Et traverse qd C.
& Consilium fecer Arbitrium, Ec. Nepl
qd C. ac J. & C. de ejus Consilio fec'
Arbitrium, Et potest', Ec. p placito qd
Def' intrabit in terras, Nejo', qd C.

& p'dict' J. & T. nullum fle fecer' Arbitrium, Rast. 156.

ff. Qd Arbitratores fec' arbitrium de sep'alibus rebus faciend' quas Def' fecit, Nepl' qd non solvit Denar' in satisfactione trans', Rast. 155.

ff. Similis Bar, Et Nepl' p'test' qd Def' non fec' aliqua p' placito non carriabit lapides, Rast. 155.

ff. Arbitrium fact' & qd ipse non arabit terram & al' resid' p'formance generat', Nepl' qd Def' arabit terram post Arbitrium fact', Rast. Ent. 242.

ff. Qd Arbitratores fecer' scriptum Arbitrii in hec verba, ac quoad sepales Articlos inde qd p'formabit, &c. specialit', Et quoad omnes alios Articulos qd p'formabit omnes in omnibus, Nepl' p' confessione de Arbitrement & Breach assignu' qd Def' carriabit molam a placea Rejo. qd non carriabit, Rast. 155.

ff. Qd Arbitratores arbitraver' qd quer' solveret Def' 20 s. & qd quer' hret de eo semam piscium, quam Def' ei obtulit, Et ipse recusabit accipere, Nepl' qd Arbitratores arbitraver' Def' deliberare quer' 4 semas piscium & facere alias res quas non fec', Et traverse qd fecer' fle Arbitrium quale Def' allegabit, Rast. 155.

ff. Nepl' qd Arbitratores fec' fle Arbitrium mes ne assignu' Breach, Et Demurr' inde, 3 Brownl. 145. Simile 2 Cro. 285.

ff. Similis Bar, Nepl' qd Def' exonabit Arbitratores, Et Demurr' inde, 8 Co. 80.

ff. Qd Arbitratores non fecer & de-
liberaver Arbitrium Repl inde, Dyer
242.

ff. Protest' qd nullum fecer Arbitrium
p placito non deliberaver aliquod Arbi-
trium, Repl p Arbitrement, & Breach,
& Demurrer inde, Dyer 243. Similis
Bar, & Demurr' inde, Co. Ent. 187.

ff. Qd Arbitratores nullum fecer
Arbitrium, nec Umpiratores fec' Arbitri-
um, Repl p Arbitrium fact' p Arbitra-
tores, Et Breach assign' p non soluc de-
nar', Rejo' qd nullum tle fecer Arbitri-
um, Hern. 313. Similis Repl & similis
Breach, Clift. 139, 140, 142, 144.

ff. Qd fec' Arbitrium in scriptis sub
manibus & sigillis parat' deliberari par-
tibus, Et award, Qd &c. put patet p
script' p'olat in Cur, Et p'formance de
ceo generalment, Repl qd Def' non ex-
onabit quer' de forisfactura Recog' juxta
Arbitrium, Rejo' qd exonabit, Demurr'
Co qd non monstrat quomodo exonabit,
Hern. 305.

Bar qd' Arbitrator' nullum fec' Arbitrium Repl'
per Arbitrium fact' & protestand' qd' Def'
non performavit aliqua, pro placito qd' non
solvit denar'.

ff. **Q**uibus lectis & auditis, (&c.) A- Bar.
tionem non, Quia dic' qd Arbitra-
tores p'dict' nullum fecer arbitrium vel Or-
dinem in scriptis sub manibus & sigillis
suis de aut concernen' p'miss' p'dict' in
Conditione p'dict' spec' sup vel ante 22
diem

diem Jan. in Conditione p̄dicta mēse
secund' formam & effect' Condition' p̄dicta',
Et hoc, &c. Unde, &c.

Repl'.

Precludi non, Quia die qđ post scripte
Obl' p̄dicta' scilicet sup 22 diem Jan. Anno
Reg' dicti Dom' Regis, nunc 12. in
Conditione p̄dicta' supius spec' apud L.
p̄dicta' in paroch, &c. p̄s S. B. & D. C. Ar-
bitratores p̄dicta' in Conditione p̄dicta' su-
perius nominat' accept' sup se onere ar-
bitrandi & ordinandi de & sup p̄miss' in
Conditione p̄dicta' supius spec' inter eund'
Def' & p̄fat' Quer' fecer' arbitrium, suum
in scriptis sub manibus & sigillis suis
int' eund' Def' & p̄fat' Quer' de & super
p̄miss' in Conditione p̄dicta' supius spec',
Per quod quidam Arbitrium hic in Cur'
plat' iidem Arbitratores ordinaver' &
arbitraver' (&c. recitan' Arbitrium ver-
batim) put p' Arbitrium p̄dicta' apparet,
Et idem quer' in facto dicta' qđ Arbitri-
um p̄dicta' in forma p̄dicta' fact' postea scilicet
p̄dicta' 22 die Jan. Anno, &c. apud L.
p̄dicta' in paroch, (&c.) deliberat' fuit tam
p̄fat' quer' qm' p̄fat' Def' scđm formam
& effect' Condition' p̄dicta', Idemq' quer'
ulterius die qđ licet ipse idem Quer' a
tempore confectio' Arbitrii p̄dicta' huc-
usq' bene & vere obserbabit p̄formabit &
custodivit omnia & singula in Arbitrio
p̄dicta' content' ex parte ipsius Quer' per-
formandi & p̄implendi secundum formam
& effectum Arbitrii ill' protestando etiam
qđ p̄dicta' Def' a tempore confectio' ejus-
dem Arbitrii hucusq' non obserbabit per-
formabit seu p̄implebit Arbitrium p̄dicta'
in

in aliquibus ex parte ipsius Def' pfor-
mand' & pimplend' secundum formam & ef-
fect' Arbitrii ill', In facto idem Quer'
dic' qd' p'dict' Def' indilate post confectio-
nem Arbitrii p'dict' non solvit p'fat' Quer'
p'dict' Summam s'l. legis monete Angl'
quas ei adtunc & ibm solvisse debuit se-
cund' formam & effectum Arbitrii p'dict',
Et hoc, &c. Unde, &c. Vide Thomps.
Ent. 155. Vide Winch. Ent. 249.

Aliter Repl', p in facto dicit sine pte-
stando, Winch. Ent. 174. Et vide postea.

Aliter nullum fecer' Arbitrium, Repl' qd' fecer'
& assign' Breach absq; protestando, &c. &
Rejunctio nul' tale Arbitrium.

¶ **E**t p'dict' W. p P. P. Att' suu' ven-
it & Defend' vim & injur' quando, &c.
Et pet' auditum scripti p'dict', Et ei Le-
gitur', &c. pet' etiam auditum Conditionem
ejusdem scripti, Et ei legit' in hec verba,
The Condition, (&c. Et le Condition fuit
pur pformance del award') Quibus le-
ctis & auditis idem W. dic' qd' p'dict' J.
actionem suam p'dict' versus eum Here
non debet, Quia dic' qd' Arbitratores
p'dict' post confectio-
nem scripti p'dict' &
ante vel ad p'dict' secundum diem Apd
non fecer' aliquod Arbitrium Ordina-
tionem sive judic' int' ipsum W. & p'fat'
J. de & sup' p'miss' in Conditione p'dict'
supius spec' secundum formam & effectum
Conditionem ill', Et hoc parat' est verifi-
care, Unde pet' judicium si p'dict' J.
Actionem

Bar.

Actionem suam p̄dicta' vers' eum here debeat, &c.

Repl'.

Et p̄dicta' J. dic' qđ ipse p̄ aliqua pal-
legat' ab Actione sua p̄dicta' hēdū p̄cludi
non debet, Quia dic' qđ Arbitrator'
p̄dicta' post confectiōē scripti p̄dicta' &
ante p̄dicta' secundū diē Ap̄ scilicet
primo diē Ap̄ril' Anno Regni dic' Dñi
Regis nunc &c. 34 supradicto, Apud
C. p̄dicta' accept' sup se oñe Arbitrii &
Judicii de & sup p̄missis in Conditione
p̄dicta' spec', Adtunc & ibm p̄ quoddam
Arbitrium suū in scriptis (Angl' put in
Writing) & parat' adtunc & ibm ad deli-
bandū eisdem W. & J. arbitrati fuer'
ordinaver' & adjudicaver' int' eundem
J. & p̄fat' W. de & sup p̄missis in Condi-
tione p̄dicta' supius spec' modo & forma
sequen', viz. (Qđ, &c.) Quod quidem
Arbitrium in script' in forma p̄dicta' fact'
parat' deliberari eisdem J. & W. ad vel
ante p̄dicta' secundū diē Ap̄ juxta
formā & effectū Conditionē p̄dicta', p̄dicti
Arbitratores postea scilicet eodem primo
diē Ap̄ Anno 34. supradicto apud C.
p̄dicta' p̄fat' J. & W. deliberaver', Idemq'
J. adtunc & ibm imēdiate sup deli-
bationē ejusdem Arbitrii eisdem J. & W.
p̄ Arbitratores p̄dicta' in forma p̄dicta' sol-
vit p̄fat' W. p̄dicta' s. s. secundū formā
& effectū Arbitrii & Judic' p̄dicta' quos
quidem s. s. p̄dicta' W. de ipso J. adtunc
& ibm recepit & acceptabit, Et idem J.
ultrius dic' qđ p̄dicta' W. p̄dicta' Rodicem
lineam & supellectil' ad vel ante recep-
tionē

tionē p̄dicta' s. s. p. ipm̄ M. de eodem J. in forma p̄dicta' vel unqm̄ postea eidem J. non delibabit secundm̄ formā & effectm̄ Arbitrii p̄dicta', Et hoc parat est verificare, Unde per judicē & debitum suū p̄dicta' unacum Dampnū suis Occone detenconē debi ill' sibi adjudicari, &c.

Et p̄dicta' M. ut prius dic' qđ p̄dicta' Arbitratores post confectiōē scripti p̄dicta' & ad vel ante secundm̄ diem Aprilis tunc pr' sequenē non fecer' aliquod tale Arbitrium Ordinatiōē sive judicium int' ipm̄ M. & p̄fat' J. de & sup' p̄missis in Conditione p̄dicta' supius spec' put p̄dicta' J. supius allegavit, Et de hoc poñ se super p̄riam (&c.) Ideo, &c. Vide Thom. Ent. 178. Pl. Gen. 248.

Rejo'.

Def' per' audit' Condition', & placitat' null' fecer' Arbitrium, Repl' per Arbitrium fact' & Breach pro non solution' Denar'.

ff. **R** Ejoind' qđ ante diem Arbitrii Def' dedit noticē Arbitratoꝝ de quibusdam Controvers' int' quer' & Def' mot' de quibus Arbitratoꝝ null' fec' Arbitrium (viz.) — Et p̄dicta' M. die qđ ipse post confectiōē scripti p̄dicta' & ante p̄dicta' 20 diem Dec' scil't 18 die ejusdem mensis D. apud L. significavit eidem M. qđ quedam controversie fuer' mot' int' p̄fat' M. & E. videlt qđ p̄dict' E. p' Ministros & servien' suos injuste cepissent 340 oves ipsius M. & ill' imparcavit in Argastulo in R. p̄dict' & ibm detinuit p' spacium

Rejo'.

cium trium Dierum, Et qđ ille p̄fat W. non delib̄at fuer̄ & qđ p̄ default delibatio- nis eorundem idem W. nobem de eisdem obibus amisit, Et qđ idem W. arrestat fuit p̄ vic̄ Com̄ E. apud E. in Com̄ E. sup̄ bre Domini Regis nunc de Latitat retorn̄ coram ipso Domino Rege apud W. in Com̄ Midd̄ Termio sc̄i M. Anno 19. sup̄dco ad secam ipsius E. sine causa Accōnis, Et qđ multe Dame fuer̄ con- tinue depascen̄ in terris p̄d p̄ default re- paracon̄ palor̄, quor̄ reparatio ptinebat p̄fat E. Et qđ p̄ succision̄ arbor̄ ipsius E. multi pali & repaguli p̄sternati fuer̄ p̄ quod terre p̄d jacuissent aperte & non munit̄ ab injuria pecor̄ al', ut sup̄ ill' p̄d M. faceret arbitrium suū, de quibus idem M. null' fec̄ Arbitrium p̄ut in Condicionē p̄d sup̄ius specificatur. Unde per̄ judic̄ si p̄d E. Accōn̄ suam p̄d vers̄ eū here debeat, &c. Quer̄ morat̄ in Rege, Et p̄ causis qđ p̄d W. p̄ Rejunccon̄ suam p̄d decessit a materia p̄ ipsū in Barra sua p̄d prius plitat̄, Ac eo qđ p̄ Rejunc- con̄ p̄d non apparet qđ Cause p̄d in Re- junccone p̄d spec̄ fuer̄ penden̄ & ozt̄ int̄ partes p̄d teē Submission̄ fact̄, Def- junḡ in morac̄. Vide Winch. Ent. 174.

ff. Def̄ puis̄ Oper̄ del̄ Condicion̄ plitat̄ in Bar', Qđ Arbitrator̄ fec̄ Arbit- rium in scriptis, sed qđ fuit uū Debum infra Submission̄ de quo Arbitrator̄ no- ticiam huit & nullum fec̄ Arbitrium, Repl̄, p̄test̄ qđ Arbitrator̄ non huit no- tic̄ de aliqua Lite, &c. Pro plito qđ Ar-
bitrator̄

bitrator ordinabit Relaxaciones faciend
altero alteri, def' demurr' generalment,
Idem Winch. Ent. 267.

Nullum fecer' Arbitrium, Repl' qd' Umpirator
fec', Rejo' qd' revocavit Submissionem, Sur-
rejo' non revocavit, Et Issue sur ceo.

ff. **A**ction non, quia dic' qd' nec Arbi-
tratores p'd nec Umpirator p'd a
tempore confectio scripti p'd hucusq' ul-
lum fecer' Arbitrium int' ipsum M. &
p'd J. de & sup p'missis in Condiçione p'd
supius specificat, Et hoc parat est verifi-
care Unde per judic' si p'd J. Accion suam
p'd vers' eum here debeat, &c.

Bar.

Et p'd J. S. dic' qd' ipse (pcludi non,) quia dic' qd' p'd M. H. & J. U. Arbitra-
tores in Condiçion p'd supius noiat' post
confectionem script' Obl' p'd & ante vel sup
p'd 31 diem Octobr' in Conditione p'd
supius mentionat' non concordaver' int' se
de aliquo Arbitrio de & sup p'missis in
eor' Arbitrio p'oit conficiend', Rone cujus
p'd R. G. Umpirator in eadem Condi-
tione s'lit noiat' post p'd 31 diem Oct ac-
cepto sup se onere arbitrandi & determi-
nand' de & sup p'missis in ejus Umpiraç
p'oit' postea scit' sup p'd tertiam diem
Post in Conditione p'd supius spec' apud
B. sci C. — Pres, fecit quoddam scriptum
suum Umpiraç indentat' sub manu & sigil-
lis suis parat' tunc & ibm delibandi
p'fat' J. & W. geren' dat' eisdem die &
Anno de & sup p'missis in Conditione
p'd

Repl'.

p̄d̄ mentionat, Per quod quidem script' Ampiraḡ idem R. arbitravit adjudicavit & ordinavit de & sup̄ p̄missis, Qd̄ (Ec. and so sets forth the Award and Breach.) Et hoc parat' est verificare Unde per judic' & debum suū p̄d̄ unacum dampn' suis occone detention' debi ill' sibi adjudicari, Ec.

Rejo'.

Et p̄d̄ III. die qd̄ bene & verum est qd̄ Arbitratores p̄d̄ in Conditione p̄d̄ nōiat ante vel sup̄ 31 diem Oct̄ in Conditione p̄d̄ menc' non concordaver' int̄ se de aliquo Arbitrio de & sup̄ p̄missis in eorū arbitrium pōit̄ conficiendū modo & forma put̄ p̄d̄ J. supius replicando allegabit sed idem W. ulterius die qd̄ ipse idem III. & p̄fat̄ J. ante tempus confectiōis script' Obl' p̄d̄ scilt' die & An' supradict' in Parr' p̄d̄ supius spec' apud B. scī E. submission' nōiation' & election' p̄d̄ int̄ eodē de p̄missis in Conditione p̄d̄ menc' sine script' fecer', p̄ p̄formation' ejus quidem submission' script' Obl' p̄d̄ fact' fuit, Et idem W. ulterius die qd̄ ipse idem III. & p̄fat̄ J. post p̄d̄ 31 diem Octob̄ & ante p̄d̄ tertium diem Nov̄ in Conditione p̄d̄ silit' mentionat necnon ante aliquod Ampiragium Arbitrium sive determination' p̄ p̄d̄ Ampiratoꝝ in Conditione p̄d̄ nōiat int̄ eos de p̄missis fuit fact' vel publicat' (Anglice delivered up) scilt' secundo die Nov̄ Anno 34. supradicto in Parr' p̄d̄ supius mentionat apud B. scī E. p̄d̄ revocabant & contramandabant, (Anglice did countermand) submission'

non electionem & nominationem in premissis Conditionem
premissis mentionat ac omnem auctoritatem
quamcumque pinde dat vel commissis prestat
R. G. Ampiratozi in Conditione premissis nominat,
Ne adtunc & ibi penitus exoneraverit premissis
R. G. ab arbitrando determinando ad-
judicando vel aliquod Ampiraq sive ar-
bitrium inter eos de premissis faciendo, Un-
de premissis R. G. adtunc & ibi notie huius,
Et hoc parat est verificare unde ut prius
per iudicem & quod premissis J. ad actione sua premissis
versus eum hendi precludat, &c.

Et premissis J. S. dic quod ipse & premissis M. S. Surrejo.
non revocaverit & contramandaverit sub-
missionem electionem & nominationem premissis seu exo-
nauerit prestat R. G. ab arbitrando vel ali-
quod Ampiraq inter eos de premissis fa-
ciendo put premissis M. sup allegabit, Et hoc
per quod inquirat per priorem, Et premissis M.
silit Ideo preceptum est vice quod venire fac
hic a Die sancte Trinitate in tres sept duo-
decim, &c. per quos, &c. Et qui nec, &c.
Ad recognoscendum, &c. quia tam, &c. (Vide
Clift. Ent. 140.)

Note, As to a Countermand it's said, That Counter-
if the Submission be without Deed, either of mand.
the Parties may countermand, and discharge
the Arbitrators without Deed, and shall lose
nothing upon Notice to the Arbitrators of such
Discharge, except there be divers Persons con-
cerned: And if divers of one Part, and divers
of the other Part, submit themselves to Arbi-
tration without Deed, one of them of the one
Part cannot discharge the Arbitrators without
the

the others his Companions of the same Party; for they were chosen by Joint-Authority. *Fitz. Arbit. 21. 21 H. 6. 30. a. 28 H. 6. 6.*

And if the Submission be by Deed, the Discharge must likewise be by Deed; and in such a Case, 'tis said, that one of the Parties alone cannot countermand the Arbitrators, *Finch 49. E. 3. 9. Fitz. Arbit. 22.*

But if the Submission be by Bond, as most commonly it is, though it be afterward countermanded, yet it's said the Bond shall be forfeited, *Bro. Tit. Arbit. & 8 Co. 82. 22 H. 6. 46.*

Nullum facer' Arbitrium, &c. Repl' qd' fec', &c.
Et Def' demurr', 2 *Vent. Rep. 219, &c.*

Bar.

¶ **Q**uibus lectis & auditis idem *W. H.*
die qd' pdia' *H. H. & W. S. Ac-*
con suam pdia' inde vers' eum here non
debent quia die qd' pdia' *M. P. & T. P.*
Arbitratores pdia' post confectioem scripti
pdia' ad vel ante pdia' 11 diem post in
Conditione pdia' menc' nullum fecer' Ar-
bitrium int' partes pdia' in Conditione
pdia' supius menc' de & in pmissis in
conditione pdi supius spec', Et hoc, (&c.)

Repl'.

Precludi non, &c. Quia die qd'
pdia' *M. P. & T. P.* Arbitratores in
Conditione pdia' supius noiat' accept' sup
se onere Arbitrandi int' partes pdia' de
& sup pmissis in Conditione pdi supius
menc' post confectioem scripti pdi & ante pdi
11 diem post in Conditione pdia' supius
spec' scilicet 10 die post Anno Regni Do-
mini Jacobi secundi nup Regis Angl'
quarto apud G. pdi fecer' quoddam Arbi-
trium

trium suū in scriptis sub manibus & sigillis suis de & sup pmissis p̄dict' adtunc & ibm partibus p̄dict' parat fore deliberandi p quod quidem Arbitrium iidem Arbitratores arbitraver & ordinaver de & sup pmissis in Conditione p̄dict' superius spec modo & formam sequen videlicet

Quī p̄dict' W. H. bene & veraciter solveret seu solvi causaret eidem R. W. R. D. & W. S. vel eor alicui summam 15 l. legalis monete Angl' ad vel ante primum diem Dec tunc pr' sequen quas Arbitratores p̄dict' judicaver p̄dict' R. R. & W. S. sustinuisse in custag & dampnis rōne cuiusdam secte sine causa p p̄dict' W. H. vers' ipsos R. R. & W. S. psecut, Et ulterius Arbitrator p̄dict' ordinaver qd omnes sect' & differenc' int' dict' W. H. ex una parte & ipsos dict' R. R. & W. S. ex altera parte que mot' hit' sive depend' fuer' ante diem Dat script Obl' p̄d absolute cessarent vacue forent & determinarent put p idem Arbitrium int' al' plenius liquet & apparet, Et p̄dict' R. R. & W. S. protestando qd p̄dict' W. H. non observabit performabit perimplebit seu custodivit aliquod in Arbitrio p̄dict' superius spec ex parte ipsius W. H. observandi performandi pimplendi seu custodiendi,

In facto iidem R. & W. S. die qd p̄dict' W. H. non solvit p̄dict' R. R. & W. S. vel eor alicui summam 15 l. sup p̄dict' primum diem Dec tunc pr' sequen dat Arbitrii p̄dict' quas ei vel eor alicui sup eund diem solvisse debuit secundum formam & effectum Arbitrii p̄dict', Et hoc

3

(Ec.)

(Ec.) Unde pet' judic', Ec. [Def' mozat
in Rege & quer' jung' in mozat.]

Note, The Condition was to perform an Award of all Differences between them.

It was argued, That this Award was all on one Side, for it doth not appear that there was any Difference between the Parties, save the Suit upon which the Costs are awarded, viz. 15 l. and that was the Suit of the now Defendant; and what Benefit hath he by staying his own Suit, and paying 15 l. for Costs? 2dly, He assigns the Breach, that the 15 l. was not paid upon the 1st of *December*, so it might be paid before, and the Award is to pay it *ad vel ante primum diem Dec.*

It was answered to the First, That there might be well intended other Differences, tho' not set forth; and for ought appears, the Plaintiff in the Action mentioned in the Award might be subject to have Costs taxed at the Prosecution of the then Defendant, whereas this Award stops the Defendant from applying to the Court for Costs. — As to the Second, If Issue be taken upon *solvit ad diem*, Payment before the Day maintains the Issue. The Court inclined that the Award was good, *sed adjournatur.*

Def'

Def' placit' qd' Arbitrator' fecer' Arbitrium
pro solutione denar' & deliberation' Gene-
ralis Relaxation' quos Def' fec'. Repl' qd'
non solvit denar', Et Exit' tender'. Sed
Rejoinder per voy de Estopple, Et quer'
morat' in Lege, 1 Saund. 324, &c.

ff. **Q**uibus lectis & auditis idem *W.* Plea in Bar.
die qd' p'dict' *T. D.* Action non,
quia die qd' p'dict' *J. C.* & *J. f.* Arbi-
tratores in Conditione p'dicta nōiat postea
scilicet 11 die Maii Anno Regni Domini
Regis nunc 20 apud *L.* p'dict' in paroch
& wardi p'dict' fecer' Arbitrium suū in
scriptis de & sup' p'missis p'dict' in Con-
ditione p'dicta spec' ac p' idem Arbitrium
p'dict' *J. C.* & *J. f.* arbitraver' qd' die Mer-
curii 13 die tunc instā Maii p'dict'
W. W. Hered' Executoz & Adm' sui sa-
tisfacerent contentarent & solverent p'd'
T. D. Exec' vel Adm' suis plenam
summam 3169 l. 16 s. 3 d. legalis mo-
nete Angl', Et ulterius arbitraver' qd'
ipse idem *W. W.* Exec' vel Adm' sui sup'
p'dict' 13 diem Maii sigillaret & ut factū
suū delibaret p'dict' *T. D.* Hered' Exec'
& Adm' suis plenam & genālem relaxa-
tionē & exonationē oīum & omīod' Action
& causarū actionū sectarū villarū Obliga-
tionū specialitat' iudic' Executionē Ex-
tent' querel' controvers' trans' dampnū
& demandū quorūcūq; ad aliquod tem-
pus ante dat' Obl' hic in Cur' plac' habit'
fact' mot' commens' sectat' p'secut' com-
miss' vel pendent p' sive int' partes p'dict',
Et

Et p̄dia' III. III. ulterius die qđ ipse
idem W. p̄dia' 13 die M. Anno 20 su-
prad' apud L. p̄dia' in paroch' & Ward
p̄d' solvit p̄d' T. D. p̄d' summam 3169 l.
16 s. 3 d. iuxta formam & effectum Arbi-
trii p̄dia', Ac etiam adtunc & ibid' sigil-
lavit & ut factum suū delibavit p̄dia'
T. D. plenam relaxacionē p̄dia' omnium
& oīod' actionū & causarū actionē seu bill'
Obl' specialitatē iudic' executionē extent
Querel' controvers' trans' & Demandi
supradia', Et hoc parat' est verificare,
Unde pet' iudic' si p̄dia' T. D. actionē, (Ec.)

Repl'.

Et p̄dia' T. D. dia' qđ ipse p̄ aliqua
p̄ p̄dia' W. W. supius p̄litando allegat'
ab actionē sua p̄dia' inde vers' ipm III.
hendi p̄cludi non debet quia die qđ p̄e-
dia' III. non solvit p̄dia' summam 3169 l.
16 s. 3 d. secundū formam & effectum scrip-
ti Arbitrii p̄dia' modo & forma put p̄e-
dia' W. supius inde p̄litando allegavit,
Et hoc pet' qđ inquiratur p̄ primam, Ec.

Rejo'.

Et p̄dia' III. III. die qđ p̄dia' T. D.
ad dicendū qđ idem III. non solvit p̄dia'
summam 3169 l. 16 s. 3 d. admitti non
debet quia die qđ idem T. ultimo die
Maii Anno 20. supradicto p̄ quoddam
scriptum suū cognovit qđ idem III. sol-
visset eandē summam p̄fata T. sup p̄e-
dia' 13 diem Maii Anno 20. supradicto,
Et hoc parat' est verificare, Unde pet'
iudic' si p̄dia' T. contra Cognicionē suam
pp̄d' ad dicendū qđ idem III. non solvit
summam denat' p̄d' admitti debeat, Ec.

Quer'

Quer' moratur in Rege, Et Def' jung' Demurrer.
in morat. Idem Saund: 326.

Note, That upon the Plaintiff's moving to have Judgment upon the Demurrer, Mr. *Saunders* for the Defendant objected; That the Plaintiff could not have Judgment, for that it appeared by the Record that the Award was void, being all to be perform'd by the Defendant, and nothing by the Plaintiff; and then if the Award be void, it is not material whether the Defendant had perform'd it or not; although he had pleaded Performance thereof; and yet he hath acknowledged the contrary by his waving of the Issue tender'd by the Plaintiff, and pleaded an ill Rejoinder; and the Plaintiff and Defendant had both agreed that the Award pleaded by the Defendant, was the true Award made by the Arbitrators, which is all over vitious: But if the Plaintiff would have aided himself, he ought to have shewn the other Part of the Award before that he assigned the Breach, which here he has not done, and therefore he could not have Judgment. And the whole Court was clearly of the said Opinion; but they would not give Judgment for the Defendant, because they conceived that there was a Trick in the Pleading; but they gave the Plaintiff Liberty, upon Payment of Costs, to discontinue. And Chief Justice *Keeling* reprehended Mr. *Saunders* for pleading so subtilly on purpose to trick the Plaintiff by omitting the other Part of the Award. But the Reporter says it was a Case of great Extremity, the Penalty of the Bond being but 2000 *l.* and the Award was for the

Defendant to pay 3100*l.* when in Truth there was nothing due to the Plaintiff, but he was indebted to the Defendant. Afterwards the Defendant exhibited an *English* Bill in the Exchequer, discovering an ill Practice of the Plaintiff with the Arbitrators, and had Relief against the Bond. *Vide 1 Saund. 327.*

To pay at
the House of
a Stranger.

§. *Barre p null Award*, Plaintiff sets forth the Award for him to pay Money in the House of a Stranger; and the Defendant to deliver upon Payment Possession of a House, &c. That the Defendant had Notice, and that the Plaintiff at the Day was ready to pay, and none ready to receive; and avers, that the Defendant did not deliver Possession. Defendant demurs, *Lev. Ent. 42. Vide postea int' Placit' Lut. Ent.*

Repl' per
Arbitrium
fact'.

§. *Qu Arbitratores non fecer aliquod arbitrium nec Eliger Umpiratozem*, Repl' p arbitrium fact' p arbitratore & ptestando qd Def' non pformabit aliqua p placito non solvit denar, 2 Bro. 102. Similis Repl', 2 Bro. 104.

Repl' per
non solvit.

§. *Qu Arbitratores fec arbitrium de separalibus rebus faciendi & p solutione denar ad separal' festa quos Def' solvit*, Repl' ptest' pd non solvit aliquem denar p placito qd non solvit denar ad tale festum. Issue qd solvit. Placit' Gen. 284.

§. Defendant pleads Payment according to the Arbitrement, *Bro. Met. 184.*

§. To

¶ To a Bond of Arbitration for Dilapidations, Defendant pleads no Award made. Repl^r, and sets forth the Award, Bro. Met. 225.

¶ Pull agard fait Repl^r confesse ceo, mes monstre un agard fait p le Umpire, Et assigne breach de ceo pur non payment de Deniers. Demur inde, Et judic p Def^r. Read's Decl. 247. Agard per Umpire.

Def^r placitat^r qd^r Arbitrium pro solutione denar^r al Estranger pro usu quer^r in submissione est vacuum.

¶ Per del Obl^r, Quibus lectis & auditis idem H. die qd^r predia^r M. Nationem suam predia^r vers^r eum here non debet, Quia die qd^r Arbitrator^r predia^r in Conditione predia^r supius noiat^r infra tempus predia^r ei inde limitat^r in dicta limitatione supius spec^r scilicet 29 die Aug^r Anno Domini 1693. supradia^r hic apud L. Regis predia^r ac infra Jur^r predia^r quoddam scriptum suu^r arbitrii manu & sigillo suis de facto subscripsit sigillabit & publicabit tanquam arbitrium suu^r int^r predia^r M. C. gen^r ex parte predia^r R. F. R. & S. F. Ar^r & H. R. Et idem arbitrator^r per idem arbitrium suu^r int^r eundem M. ex parte predia^r R. & S. & H. sic fact^r arbitrabit qd^r idem H. solveret seu solvi cauaret infra unum mensem post dat^r arbitrii ill^r supradicto M. p^r usu predia^r R. & S. sumam duodecim librar^r & sigillare alt^r alteri gen^rales Relaxationes sup solutione dicte monete,

Bar al^r Payment to Estranger.

sed idem H. ulterius dic qd idem arbitrium arbitratoꝝ predict' in forma predict' fact' penitus vacuū & nullius effectus in Lege existit, Et hoc parat est verificare, Unde pet' iudiciū si predict' M. actionem suam predict' vers' eum habere debeat, &c. Vide Clift. 139. n. 3.

Ad nullum fec' Arbitrium Repl' per Arbitrium fact' pro solutione denar' ad shopam scribe cum verificatione qd' Def' solvisse potuit juxta Arbitrium existen' aperta shopa.

Repl'.

ff. **E**t predict' C. I. dic qd ipse p alia qua preallegat ab actione sua predict' hendi precludi non debet quia dic qd R. H. & W. J. duo arbitratoꝝ predict' in predict' Conditione script' Obl' predict' supius noiat post confexionē script' ill' & ante predict' 7 diem Apꝝ extunc pꝛ' sequen' in Conditione predict' supius mentionat scilicet sexto die ejusdem Apꝝ Anno Regni dicti Domini Regis & Domine Regine nunc quinto supradicto apud L. predict' in Paroch' & Ward' predict' accepto sup se onere arbitrandi & determinandi de & sup premisis in eoz & predict' W. C. arbitrium ut prefertur poit fecer' & publicaver' quoddam scriptum suū arbitrii indentat' sub manibus & sigillis ipsorū R. H. & W. J. arbitratoꝝ attestat' p duos videlicet quosdam Ro. W. & Ri. W. credibiles testes parat' deliberand' dict' partibus apud vel in predict' tunc shopa predict' W. H. scribe in Conditione predict' supius spec' gerens
Dat

Dat eodem sexto die App Anno 5. supradicto de & sup premissis in eadem Conditione supius menc secundum formam & effectum Condition ill' p quod (Ec. and so sets forth the Award) Et predict' E. V. prestando qd nec predict' J. W. nec predict' J. T. performabit aliqua in script' arbitrii predict' content ex parte sua performand' in facto idem E. V. die qd predict' J. W. sup vel ante predict' sextum diem Julii post confectioem script' arbitrii predict' pr' sequen inter predict' horas secundam & quintam in predict' tempore pomeridiano ejusdem diei apud vel in predict' tunc shopa predict' W. H. non solvit vel solvi causabit predict' E. V. predict' sumam 25 l. quam ei sup eundem diem int horas ill' solvisse debuit secundum formam & effectum predict' scripti arbitrii, Et hoc parat est verificare, Unde pet' judic' & debum suu predict' unacum dampnis suis occone detentione Debi ill' sibi adjudicari, Ec. Cum hoc quod idem E. V. verificare vult qd predict' shopa predict' W. H. tempore confectioem predict' scripti arbitrii & toto predict' sexto die Julii post confectioem script' ill' pr' sequen fuit Cois shopa a predict' hora secunda usq; horam quintam ejusdem Diei aperta existen ita qd predict' J. W. predict' sumam 25 l. ibm solvisse posset, Ec. Vide Clift. 143.

Averment in
Repl' as to the
Place.

Vide 1 Keb. 13. Car. 2. Where Payment is to be in the House of a Stranger, he shall not be presumed to be able to perform it, but otherwise where it is to be at the House of a Stranger.

Averment as
to the Place.

Witer, Averment upon Non-payment of Money at the House of a Stranger, vocat' the Gate-house, Cum hoc qđ pđict' R. P. verificare vult qđ pđict' domus manconat' pđict' J. C. vocat' the Gate-house, est & pđict' tempore confectio scripti Ampirag pđict' & semper postea fuit Coe hospitium, &c. Idem Clift. 142.

Averment,
qd' nulla
acc'o de novo.

Witer, Averment upon an Award to pay Money, and to give general Acquittances of all Actions, &c. Int' dictas partes ad aliquod tempus ante dat' scripti Arbitrii pđict' hit' mot' & penden,] Cum hoc quod idem T. B. verificare vult qđ nulla Actio aut Actiones scete lites trans deba debet' (Anglice Debates) Compoti aut Demandi quaecunq' accrebit vel accreber' int' pđict' J. R. & T. B. int' confectioem script' Obl' pđict' & pđict' diem dat' scripti Arbitrii pđict', &c. Vide Clift. 142.

A like Averment.

Witer, Averment upon an Award to pay Money ad Austral' Porticum in Ecclesia paroch' de F. and then immediately after the Money paid, to give general Releases de omnibus Actionibus Debitis & Demandi quibuscunq'. Cum hoc qđ idem R. verificare vult qđ Arbitrium pđict' fact' fuit de & sup pmissis in Conditione pđict' supius specificat' tantum, Qđq' nulla Actio causa vel cause Actionum scet' bill' Obligato script' Obligato specialitat' Iudicia Execution Extent querel' Controvers' trans Dampna vel De-

Demandi de novo hit' fact' mot' post'
 Commensat' psecut' commissis seu de-
 penden' fuisset p aliqua causa quacunq'
 surgen' seu acciden' int' partes pdict'
 post submissionem ill' sic fact'.

Et pd' Ro. modo Def' ptestando qd' pd' Rejo. per non
 plitum pd' R. supius replicando plit' ac fec' tale Ar-
 materia in eodem content' minus suffi- bitrium.
 cien' in Lege existunt ad Actionem pd' R.
 pdict' vers' ipsum Ro. modo Def' hend'
 manutenend'. Pro plito tamen dic' qd'
 Arbitratores pdict' in Conditione pdict'
 supius noiat' sup vel ante pdict' 20 diem
 Sept' in Conditione pdict' script' Obl'
 pdict' mentionat' non fec' aliquod tale
 Arbitrium qual' pdict' R. supius in Re-
 plicatione sua allegabit, Et de hoc pon'
 se sup priam, Et pdict' R. R. filit', Ideo
 precept' est vic' qd' ve fac' hic a die sce
 Trin' in tres Sept' 12. Ec. p quos, Ec.
 Et qui nec, Ec. ad recogn', Ec. quia
 tam, Ec. Idem Clift. 145.

Issue.

R. Aliter secundum, 3 Lev. Rep. 186. Et Repl' qd' nul-
 idem J. R. ulterius dic' qd' post dat' la acc'o de
 scripti Obl' pdict' & ante finem unius novo.
 Sept' p'or' post dat' scripti Arbitrii
 pdict' nulla nova causa Actionis surges-
 bat fuit aut accidit int' ipsos T. & J. R.
 p aliqua materia quacunq', Et hoc, Ec.

Note, The Condition of the Bond was, Ita
 qd' Arbitrium fact' fuit in scriptis parat'
 deliband' partibus in differentia aut
 talibus cor' qual' desiderarent in vel ante
 ult' diem Hill' Term' pr', Et Def' plitat'
 qd' nullum fecer' Arbitrium ante vel
 sup

Rejo' qd' ac-
c'o de novo.

sup p'dict' ult' diem p'dict' Term' s'ci Hil' p'or' sequen' dat' Obl'. Plaintiff replies, Qd' Term' Hil' incipiebat 23 die Jan' & finivit 12 die Feb', Et qd' Arbitrator 8 die Feb' fecit Arbitrium in scriptis parat' deliberand' utriusq' partium p'dict' quod p'fert' in Cur', qd' le Def' solveret 7 l. 10 s. in plena Satisfactione, &c. infra unam septimanam p'or' post dat' ill' Arbitr', Et qd' quilibet eor' sigillaret generalem relaxationem, &c. and avers as above. The Defendant by Rejoinder confesses the Award, Sed ante finem Septimane, videlicet 6 Feb' que fuit post Obligationem & ante confectionem Arbitrii nova causa Actionis surgebat videlicet. Trepas of which the Arbitrators had Notice, Et sic nullum Arbitrium fecer'. Plaintiff demurs.

Release, to
what Time.

And it was objected, that the Award was void: 1. For that it is of Payment of Money in Satisfaction of all Demands generally, which shall extend to the Time of the Award, and so beyond the Submission. And 2^{dly}, That the Release being general, it refers to the Time of the Release, and shall release the last Cause of Action which was not within the Submission, and also will release the Submission Bond. But was resolved by the whole Court, That the Award was good; and a Difference taken where the Award is of Satisfaction unto the Award, or of a Release unto the Award, for that is ill. But when the Award is general, without limiting to what Time, and is made, De & sup p'pmissis, it shall be intended to be unto the Time of the Submission, and a Release of all Demands, &c. Un-
til

til the Submission shall be a good Performance of the Award, and Judgment was given for the Plaintiff. 3 Lev. Rep. 188, 189. See the Authorities there cited, *Vide Postea*.

It is said, if a Submission be conditional, and amongst other Things mutual Releases are awarded, which are void by reason that they extend over the Time of Submission; yet if other Matters are awarded to each Party, the Award is good, 1 Lut. 520, 529. Simile.

Arbitrement fait puis Darrein Continuance plede, & Repl' per null Arbitrement fait & Issue.

ff. **P**ostea continuat' pres' int' partes Process con-
tinued.
p'dia de p'dia' plico p' Jur' ponitur
in respnd int' eos hic usq; ad hunc diem
scit a die s'ci Hil' in quindecim dies tunc
pr' sequen', Et modo hic ad hunc diem
ven' tam p'dia' A. quer' qm' p'dia' B. p'
Att' suos p'dia', Et jur' impannellat' ex-
ac' silit ven', Et sup hoc p'dia' B. resca ve-
rificatione sua p'dia' p' ipm' supius ptens'
die qd' Justic' hic ad capcon' Jur' p'dia' Demur' al
Caption' Jur'.
pcedere non debent quia die qd' post ult'
continuation' pliti p'dia' scit post quin-
den' s'ci Michis ult' pterit' de qua qui-
dem quindena s'ci M. plitum p'dia' ult'
continuat' fuit usq; p'dia' quinden' s'ci Hil',
& ante quam quidem quinden' s'ci Hil'
scit sup festum s'ci S. Anno Regni Do- Reference to
Arbitrement.
mini Regis nunc 20. apud A. in Com'
p'dia' tam idem quer' qm' p'dia' Def'
(eor' Amicis ad placitum p'dia' int' eos
amicabilit' determinandi intervenien') ex
eor'

Arbitrament
made.

eorū unanimi assensu & consensu posuer
se ipsos in Arbitrium ordinationē & ju
diciū f. A. & J. G. tū de transgr pō
quā de omnibus al trans plitis & que
relis int' eos ante idem festum hit mot'
sive penden, qui quidem f. & J. accept'
sup se onere Arbitrii Ordinationē & Ju
dicii pōit' postea scit' sup festum pōit'
apud A. pō Arbitraver' ordinaver' & ad
judicaver' de & sup pmissis modo & for
ma sequen videt', qd' pōit' Def' solve
ret eidem quer' 10 s. sup festum Annun
ciationē bte Marie Virginis tunc pr'
sequen, Et hoc, &c. Unde pet' judic' &
Justic' hic ad captionē Jur' pōit' ulte
rius pcedere velint, &c. Et qd' pōit'
quer' ab Actione sua pōit' inde vers' eum
hend' pcludatur, &c.

Nul tiel
Arbitrement.

Et pōit' quer' dic' qd' Justic' hic p
aliqua supius allegat' ad captionē Jur'
pōit' sine dilōne pcedere debent, quia dic'
qd' Arbitrator pōit' nullum fecer' tle
arbitriū ordinationē & judiciū de & sup
pmissis qual' pōit' Def' supius plitando
allegabit, Et hoc pet' qd' inquiretur p
pziām, Et pōit' Def' asit', Ideo pcept'
est vic' qd' venire fac' hic (tali retorū
xii, &c.) Per quos, &c. Et qui nec, &c.
ad recognō, &c. quia tam, &c. Vide
Brownl. Rediviv. 181, &c.

Bar.

ff. The Defendant pleads, Qd' Arbitra
tor null' fecer' Arbitrium, sed le Ampire
fec' Arbitrium qd' Def' solveret Quer'
12 l. tali die, quas eodem die obtulit,
Et Def' recusabit. The

sur Arbitrement.

29

Repl.

The Plaintiff replies, The Empire fecit
Impirag qd' Def' solveret quæ 12 l. in
 satisfactione omnium Action & Contro-
 versiarum, &c. Et qd' le Def' non obtulit
 solvere, Et hoc pet' qd' inquiretur p
 pziām. The Defendant demurs. 3 *Levin.*
Rep. 161, &c.

It was argued for the Defendant, That the
 Plaintiff ought not to have concluded to the
 Country, having alledged new Matter, scilicet,
 That the Sum awarded was in Satisfaction of
 all Controversies, without which the Award
 was void, and by this Means the Defendant is
 deprived of his Opportunity of a Traverse to it;
 and therefore the Plaintiff might not have Judg-
 ment, because it does not appear to the Court
 upon this Pleading, whether the Award be
 good or void; and of the same Opinion was
 Chief Justice *Jones* and *Charlton*, after Two Ar-
 guments at the Bar. *Windham & Levins* è con-
 tra, That the Defendant had admitted the
 Award to be good, and took upon him to
 plead the Performance.

And when the Plaintiff had pleaded this Traverse dis-
 Matter which proves the Award good, the De- allowed.
 fendant shall not be admitted to traverse it, to
 prove the Award ill and null: But if the Truth be,
 that the Award was not in Satisfaction of all Con-
 troversies, and so an Award on one Part only,
 the Defendant ought at first to have pleaded Null
 Award. But when he had pleaded it as a good
 Award, and by the Replication it appears to
 be so, he shall not be admitted to a Traverse
 to prove it no Award; for that would be a
 Departure from his Plea, and amounts, that
 in

in his Plea there was an Award made ; and in his Rejoinder, to say there was no Award. Et sic pendet deus versus deus.

See 3 Lev. Rep. 164. and see 1 Sand. 326, 327. Et vide ante.

Aliter null fecer' Arbitrium, Plaintiff sets forth the Award made Ore tenus. Defendant demurs, and Plaintiff joins in Demurrer, 2 Vent. 239, &c. Vide Lev. Ent. 40.

Bar per nul
Award.

ff. **Q**uibus leais & auditis idem S. die qd' p'dia' J. action non, Quia die qd' Arbitrator p'dia' post confectionem script' p'dia' & ante p'dia' septimam horam post meridiem p'dia' 25 diei Julii Anno Domini 1689. supradia' nullum fecer' Arbitrium int' ipm S. & p'fat' J. de & sup p'missis in Condition p'dia' supius spec, Et hoc, &c. Unde, &c.

Repl' per A.
award fact' ore
tenus.

Et p'dia' J. die p'cludi non, quia die qd' ipsa eadem J. diu ante confectionem script' p'dia' videlt' Termino sc'e Trin Anno Regni Domini Regis & Domine Regine nunc primo in Cur' ipsor' Regis & Regine de Banco hic scilt apud Westm in Com Midd' implitasset ipm S. in quodam plito trans sup casum de eo qd' idem S. dixisset de p'fat' J. diversa scandalosa Anglicana verba quod quidem plitum tempore confectionem ejusdem scripti fuit penden & indeterminat, Adq' Arbitrator p'dia' accept' sup se onere Arbitrii p'dia' immediate post confect' scripti ill

ille scilicet p̄dict' 25 die Julii Anno Domini
1689. sup̄radict' & ante septimam horam
post meridiem ejusdem diei apud W.
p̄dict' arbitrium suum ore tenus de & su-
per p̄missis in Conditione p̄dict' sup̄ius
menc' fecer' & publicaver' ac partibus
p̄dict' ibid' ante horam ille declaraver'
modo & forma sequen' videlicet qd' p̄dict' S.
solberet eidem J. 12 pecias auri cuneat',
vocat' Guineas, ac omnes tal' denar' sum̄
qual' eadem J. erogasset seu expendis-
set in & circa prosecutionē placit' p̄dict',
Quodq; immediate post hujusmodi solu-
tionē alt' tam p̄dict' J. qm̄ p̄dict' S. da-
ret alteri cor' p̄ script' General Relaxa-
tionē omnium Actionū causarū Action &
Demandi quocūq; usq; p̄dict' tempus
confectionē scripti p̄dict' int' eos moven',
Et eadem J. ulterius die qd' tē con-
fecōn script' Ob̄ p̄dict' & Arbitrii p̄dict'
quolibet pecia hujusmodi auri, vocat'
Guineas, se attingebat in valore ad 21 s.
6 d. Quodq; adtunc & p̄dict' tē confec-
cōn arbitrii p̄dict', p̄dicta J. erogavit
& expendidit in & circa p̄secucōn pliti
p̄dict' summam 11 l. 7 s. 7 d. videlicet
apud W. p̄dict' unde p̄dict' S. postea
scilicet primo die Aug' Anno Domini Re-
gis & Regine nunc primo apud W. p̄dict'
huit notic' posteaq; scilicet 20 die ejusdem
Aug' apud W. p̄dict' eadem J. requisit-
vit eund' S. ad solvendū eidem J. tam
p̄dict' 12 pecias auri vel valorē inde qm̄
p̄dict' 11 l. 7 s. 7 d. protestando autem
qd' p̄dict' S. non solvit eidem J. p̄dict'
sum̄am 11 l. 7 s. 7 d. In facto eadem
J.

Demur'.

J. dic' qd' p'dict' S. non solvit eidem J. p'dict' 12 pecias auri cunat', vocat' Guineas, seu valoꝝ inde secundū formā & effectū Arbitrii illi, Et hoc, &c. Unde pet' judic' & debum (&c.) Def' moratur. 2 Ven. 241.

The Condition of the Bond was to perform the Award of Two Arbitrators:

1. Upon the Argument it was said, That this Award as set forth appears to be void, for 'tis to pay the Charges expended, circa placit' p'dict', and the Award doth not mention any Suit before. And though the Plaintiff in her Inducement saith, that she had an Action for Words against the Defendant then depending, that will not help it, for that is no Part of the Award, but the Award in the Form as 'tis set forth is unintelligible, there being no Suit mentioned before, to refer placit' p'dict' unto.

2. 'Tis not sufficient to award Payment of the Charges in such a Suit, it being altogether uncertain what the Sum will amount unto.

3. It ought to have been shewn, that the Plaintiff had a Cause of Action in the Action that is mention'd to have been brought against the Defendant for Slander; and so is *Spigurnel's Case* in *Siderfin*, part 1. 12.

Parol Award,
how.

Per Cur', As to the First, if the Award were in Writing in such Form of Expression, it could not be good; but he which sets forth an Award by Parol is not tied to the Words, for the precise Words might be very difficult to prove, but 'tis sufficient to shew the Effect
and

and Substance of what was awarded by Word of Mouth, and 'tis sufficiently shewn that this Award was made concerning the Action of Slander.

As to the Second, the Court held that the Award was good; for it may be easily reduced to a Certainty when 'tis made appear what was laid out in that Suit, as in 1 Roll. Abr. 251. *Beale & Beale*, and in the 3d Cro. 383. to pay the Charges of such a Voyage, held a good Award.

Thirdly. The Plaintiff need not shew that there was Cause of Action, for that is left to the Arbitrators, and they have Power to award Charges thereupon, though in Point of Law there were no Cause of Action, for the Parties have made the Arbitrators their Judges. And the Court were not satisfied with the Opinion cited by *Siderfin* in *Spigurnel's Case*, and said he was then a young Reporter. Whereupon *Judicium p Quer.* Nota.

Nullum fecer' Arbitrium, Repl' per Arbitrium fact' & qd' parat' & oblat' fuit fore deliberrand' Def' tali die sed nec Def' nec aliquis pro eo ven' ad idem recipiend' & assign' Breach pro non solutione denar', &c. 2 Sand. 184, &c.

¶ Quibus lectis & auditis idem T. Bar.
 Quid qd' pdia' M. Accon non, quia
 die qd' pdia' H. R. & C. G. Arbitra-
 tores in Conditione pdia' supius mene
 non fecer' aliquod Arbitrium int' pdia'
 T. M. & pdia' M. R. in Conditione
 D i d i a'

pdia' noiat' secundum formam & effectum Con-
ditionem illam, Et hoc, &c. Unde, &c.

Repl' per
Award' fact'.

Precludi non, &c. quia die quod pdia' H. R. & C. G. Arbitratores pdia' in Conditione pdia' noiat' post confectio- nem script' Obl' pdia' & ante pdia' pri- mum diem Maii in Conditione pdia' sit- mene scilicet primo die Feb' Anno Domi- ni 1667. pdia' apud L. pdia' in Paroch & Warda pdia' accept' sup se onere ar- bitrandi & adjudicandi de & sup pmiss' in Conditione pdia' supius spec' int' pdia' M. R. & pfat' T. M. adtunc & ibm fe- cer' quoddam Arbitrium suum in scriptis indentat' sub manibus & sigillis eor' de & sup pmissis in Conditione pdia' supius spec' ac p idem arbitrium suum adtunc & ibm arbitraver' & ordinaver' in modo & forma sequen' videlicet quod &c. (setting forth the Award) Et pdia' M. R. ulterius die quod Arbitrium pdia' sic in scriptis inden- tat' sub manibus & sigillis eor'dem Ar- bitrator' postea scilicet p totum tempus int' horas secundam & quintam post meridiem ejusdem primi diei Feb' in pdia' aula pransoria Decani & Capituli Westm' sci- tuat' apud W. pdia' in Com' Midd' pa- rat' & oblat' fuit fore deliband' pfat' T. M. sed nec ipse nec aliquis al' ex parte sua ibm ven' ad idem Arbitrium recipiend', Et eadem M. ulterius die quod Arbitri- um pdia' sic in scriptis indentat' sub manibus & sigillis eor'um Arbitrator' p totum tempus int' horas secundam & quintam post meridiem pdia' primi diei Maii

Mañ in Condiçione p̄dicta' sup̄ius spec̄ in
p̄dicta' aula p̄ansoria Decani & Capitli
III. p̄dicta' s̄it parat̄ & oblat̄ fuit fore
deliband' p̄fat̄ C. M. sed nec ipse nec
aliquis al' ex parte sua ibm ven' ad idem
recipiend', Et p̄dicta' M. ulterius die qđ
licet ipsa eadem M. a tee' confectionis
Arbitrii p̄dicta' hucusq; performabit p̄im-
plebit & custodivit omnia & singla in
Arbitrio p̄dicta' content' ex parte sua per-
formand' p̄implend' & custodiend' scđm
form̄ & effectm ejusdem scripti Arbitrii Breach.
Protestandoq; qđ p̄dicta' C. non p̄formavit
p̄implebit seu custodivit aliqua in Ar-
bitrio p̄dicta' sup̄ius spec̄ ex parte sua
p̄formand' p̄implend' & custodiend' in
facto eadem M. die qđ p̄dicta' C. ante
vel sup̄ p̄dicta' 10 diem Junii in Arbi-
trio p̄dicta' sup̄ius spec̄ non solvit p̄fat̄
M. p̄dicta' Centum Libz' secundm form̄
& effectm Arbitrii p̄dicta', Et hoc, &c.
Unde pet̄ judic̄ & debum, &c.

Et p̄dicta' C. M. die qđ Arbitrium Rejo.
p̄dicta' sic in script̄ indentat̄ sub mant-
bus & sigill' p̄dicta' Arbitrator' p̄ totum
tempus p̄dicta' int̄ p̄dicta' horas secundam
& quintam post meridiem p̄dicta' p̄imi
diei Febz' in p̄dicta', Aula p̄ansoria
Decan' & Capitli III. scituat̄ apud III. in
p̄dicta' Com' Midd' non parat̄ s̄ve oblat̄
fuit fore deliband' p̄fat̄ C. M. ac qđ
Arbitrium p̄dicta' sic in script̄ indentat̄ sub
manibus & sigillis p̄dicta' Arbitrator'
p̄ totum p̄dicta' tempus int̄ horas secundam
& quintam post meridiem p̄dicta' p̄imi
diei

Demur.

diei Marti in Condicione p̄dia' sup̄ius
 spec̄ in p̄dia', Aulap̄ransoria p̄dia' Deca-
 ni & Capitli M. p̄dict non parat' nec ob-
 lat' fuit fore deliberand' p̄fat' T. M. put
 p̄d' M. sup̄ius replicando allegavit, Et
 hoc parat' est verificare, Unde ut prius
 pet̄ iudic', Et q̄d p̄d' M. ab Alcone sua
 p̄d' inde vers' ipm T. hend' p̄cludat', Et.
 Quer moratur in Rege, Et Def' jung
 in morat'. 2 Saund. 186.

1. The Plaintiff's Council argued, That the Rejoinder was a Departure from the Plea in Bar; for in the Plea the Defendant says the Arbitrators made no Award, and yet in his Rejoinder he had implicitly confessed that they had made one, but that it was not tendered according to the Condition, which is a plain Departure; for it is one Thing not to have made an Award, and another Thing not to have tender'd it, being made. And although by the Condition both those Things are necessary to bind the Defendant to perform, yet the Defendant ought only to rely upon the one or the other of them, and may not insist upon both; for then his Plea would be double, one of the Matters being as sufficient to bar the Plaintiff of his Action as both together. And then when the Defendant in his Plea had chosen one of the Matters, viz. that the Arbitrators had made no Award, he may not in his Rejoinder wave the Matter of his Bar, and come to the other Matter, viz. that the Award was not tender'd; and yet in his Rejoinder he might have maintained his Plea, by averring that the Award was not tender'd according to the Condition;

dition: But if the Truth had been, that altho' the Award was made, yet that it was not tender'd according to the Condition, the Defendant ought to have pleaded thus at the first in his Plea, *scilicet*, That the Award was not tender'd as he had said at first. But now the Defendant had clearly departed from his Plea in Bar, and had pleaded other Matter which is not pursuant to the Matter in his Bar; and *Kelw. fo. 175.* was cited to that Purpose.

2. It was objected, That if the Rejoinder had not been a Departure, yet it could not be good because of the ill Conclusion of it: For the Plaintiff in his Replication had expressly averr'd, that the Award was tender'd according to the Condition, which is a plain and absolute Affirmative; and the Defendant in his Rejoinder says, that the Award was not tender'd *modo & forma put, &c.* which is a flat and direct Negative; and therefore the Defendant ought to have concluded his Rejoinder *Al Pais*, (for there was a perfect Issue between the Parties) and not with a Conclusion to the Court, with *hoc parat' est verificare, &c.* For after the Plaintiff's Affirmative, if the Defendant, when he had made a full and direct Negative, and not by a Traverse *Absoq' hoc, &c.* will not conclude to the Country, the Matter shall never be determined; for by the same Reason that the Defendant shall not conclude *Al Pais* by his Rejoinder, the Plaintiff shall not be bound to conclude his Surrejoinder *Al Pais*, although he does nothing but only aver the Affirmative pleaded by him before, *scilicet*, That the Award was tender'd *modo & forma, &c.* and so the Defendant may rebut in the Negative

tive again without concluding to the Country; and so the Pleading shall be infinite without any Issue to be tried *per Pais*, which Thing is absurd; and the Issue of the Tender of the Award being perfect in the Defendant's Rejoinder, the not concluding to the Country in the Rejoinder is Matter of Substance, of which Advantage may be taken upon a general Demurrer; for by the ill Conclusion of the said Rejoinder, the Merits of the Cause cannot be tried, and by consequence cannot appear according to the Intent of the Statute of special Demurrers, 27 *Eliz. cap. 5.* and concluded that the Rejoinder was ill for that Cause also. Whereupon the Court ruled that the Rejoinder was a Departure, and that it was ill concluded, and therefore insufficient in Substance in both, *Et judic' p Quer.*

Judic' pro Quer.

Qd' Arbitratores nullum fecer' arbitrium in scriptis vel per verbum oris, Et qd' nominaverunt un' F. Umpirator' qui nullum fec' arbitrium infra tempus limitat', &c. 2 Vent. Rep. 110.

Bar, that the Arbitrators made no Award.

ff. Quibus lectis & auditis idem J. C. dic' qd' p'd B. C. accōd suam p'd indevers' eum virtute script' Obl' p'd hic in Cur' plac' here non debet quia dic' qd' (p'd F. B. & R. S. in Condition' p'd superius menc' post confecōd script' Obl' p'd hic in Cur' plac' ac infra tempus p'd in Condic' p'd in ea parte limitat' null' fecer' Arbitrium ordinem Arbitrament' final' finem vel determinacōd in scriptis vel p verbum oris de sup p'miss' in Condition' p'd superius menc' int' p'fat' B. C. & p'd

p̄d J. E. Et p̄d J. E. ulterius die qđ
p̄d F. B. & R. S. post confectōem scripte
Obl p̄d hic in Cur' plat & infra tempus
in Condiçione p̄d in ea parte limitat',
Scilicet 10 die Ap̄d Anno 3. supradicto
apud L. p̄d in Paroch & Wardi p̄d noia-
ber quendam F. J. Ar fore Umpiratoꝝ
int' p̄d B. & p̄fat J. E. de & sup pze-
miss' p̄d, Qđq p̄d F. J. sic ut p̄fert
Umpiratoꝝ noiat infra tempus ei in
Condiçione p̄d in ea parte limitat' nullum
fec' Arbitrium sive Umpirag aut deter-
minacōem de & concernen' p̄miss' p̄d p
scriptum vel verbum oris, Et hoc, &c.
Unde, &c.

Neither did
the Umpire.

Et p̄d B. p̄cludi non, quia die qđ bene
& verum est qđ p̄d F. & R. in Condi-
çione p̄d noiat post confectōem scripte
Obl p̄d ac infra tempus p̄d in Condi-
çione p̄d in ea parte limitat' nullum fe-
cer' arbitrium ordinem arbitrament' fi-
nal finem vel determinacōem in scriptis
vel p verbum oris de & sup p̄miss' in
Condiçione p̄d supius mençonat' int' p̄d
B. & p̄fat J. E. ac qđ p̄d F. B. & R. S.
ante 16 diem Ap̄d in Condiçione p̄d men-
çonat' scilicet die & loco in p̄lito p̄d mēç
noiaber' p̄d F. J. Ar fore Umpiratoꝝ
int' p̄d B. & p̄fat J. sed p̄d B. ulterius
die qđ p̄d F. J. adtunc & ibm fore Umpi-
rat' int' eund' B. & p̄fat J. de & sup p̄miss'
penitus recusabit, Et sup inde p̄d F. B.
& R. postea adtunc & ibm scilicet p̄d 10 die
Ap̄d Anno 3. supradicto apud L. p̄d in
Paroch & Wardi p̄d noiaber' quendam
C. C. Ar fore Umpiratoꝝ int' p̄d B. & pze-
fat'

Repl', that
the Second
Umpire made
an Award
ore tenus.

fat' J. E. de & sup pmiss' p'dict', Et
idem B. ulterius die qd p'dict' C. postea
& ante p'dict' 16 diem Ap'd in Conditione
p'di mene scit 14 die Ap'd An' 3. supradict'
apud L. p'dict' in Paroch & Warda p'di
suscepto sup se onere Umpirag' p'dict' ore
tenus, (Anglice by Word of Mouth) ordi-
nabit & arbitrabit qd p'dict' J. solveret
p'fat' B. 70 l. sup 19 diem Maii tunc pr'
sequen' apud domn' J. E. in S. in Cam. E.
int' 12 & 3 horas post meridiem ejusdem
diei, Et qd post talem solutionem sup eundem
diem apud eundem locum p'dict' B. & J.
An' eor' alteri invicem sigillarent gene-
rales Relaxaciones, p'dict' tamen J. E.
licet sepius requisit' p'dict' 70 l. eidem B.
non solvit juxta form' & effectum Umpi-
rag' p'dict', Et hoc parat' est verificare,
Unde per judic' & debum & dampna sua
sibi adjudicari, &c.

Breach.

Demurrer.

Def' moratur in Rege, Et p' Causis
videt', Qd non constat p' Replicacon' ill'
qd idem J. fuit notic' qd Arbitrator
p'dict' notaver' p'dict' C. C. fore Umpirator
int' partes p'dict' vel qd p'dict' C. fuit
aliquam auctoritat' ad faciend' aliquod
Umpirag' vel fore Umpirator' int' easdem
partes de pmissis p'dict', &c.

Judic' pro,
Quer.

Def' jung' in morat', and Judgment was
given for the Plaintiff by Three Justices: [Chief
Justice Pollexfen dissenting, because the Arbi-
trators had executed their Authority, and had
no Power to name a second Umpire; and that
though F. J. did refuse, he might still have pro-
ceeded; and so C. C. had no Authority as
Umpire; or else there would be a concurrent

Au-

Authority in several Persons, which the Law would not suffer, as in *Roll. Abr.* 262. and *Sey.* 306. so 1 *Roll. Abr.* 261.] But the Reasons of the other Three Justices were, That F. J. though nominated, yet was no Umpire, for his Refusal hinder'd that, and 'tis the Acceptance that makes him Umpire or Arbitrator; and that admitting it only an Authority to the Arbitrators to name an Umpire, yet there was no compleat Execution, for the Refusal of F. J. made it amount only to a bare Proposal to him, and did not conclude the Arbitrators to name another; and the Condition of the Bond was to be observed to submit to such a one as should be Umpire, and Umpire by the Nomination of the Arbitrators. It was further said, that if F. J. after Refusal might have taken upon him again in case the Arbitrators had named no other, yet after another was named he could not, because their naming another upon his Refusal had quite taken away their first Nomination; but if F. J. had accepted before they proceeded to name another, then they had been prevented naming any other; so here could be no concurrent Power at all. *Vide* 2 *Roll. Abr.* 261. *Frall & Bierly*, and 2 *Ven.* 113, &c. 2 *Saund.* 129. 1 *Mod. Rep.* 274. Where the first Umpire refuses.

Also these Points were hereupon settled, *viz.* Authority That where an Authority is once fully executed, the Power is determined, but not so without a compleat Execution; and where a Man is vested with a bare Authority, his Denial or Refusal to execute it does not conclude him, but that he may execute it afterwards; but 'tis otherwise where he is vested with an In.

Interest. *Vide 2 Vent. 115, 116, 117. 3 Lev. 263.*

The Sole
Question.

Note, This Action was Debt upon Bond, to stand to the Award of F. B. and R. S. on or before the Ninth of A. and if the Arbitrators made no Award, then to stand to the Umpirage of such Umpire as F. B. and R. S. should nominate to be made on or before the 16th of A. and upon the former Pleadings, the sole Question seemed to be, Whether Arbitrators, having Power to name an Umpire, may name a Second if the First refuses.

ff. Qd' seperales Arbitratores non fecer' aliquod arbitrium, nec Umpirator fec' Arbitrium, Repl' confess' qd' seperales Arbitratores nullum fecer' Arbitrium, sed qd' Umpirator fec' Umpirag' & Breach assign' int' al' pro non solutione denar'. *Vidian Ent. 190. Clift. 142. Simile & Demur' inde, Clif. 137.*

*Simile & Demur' inde, 1 Saund. 62.
Butler vers' Wigge.*

Bar, that the
Arbitrators
made no A-
ward, &c.

Quibus lectis & audit' idem C. dic' qd' p'dict' H. B. Action non, quia dic' qd' Arbitrator p'dict' in Conditione p'dict' sup'ius nōiat' nullum fecer' Arbitrium ordinationē sive judic' de & sup' p'miss' in Conditione ejusdem scripti Obl' sup'ius spec' ad vel ante p'd' 23 diem Jan. Et idem C. M. ulterius dic' qd' Umpirator p' Arbitratores p'dict' elect' null' fec' Umpirag' determinacion vel judic' de & sup' p'miss' in Conditione ejusdem scripti Obl' sup'ius silit mēc' ad vel ante p'dict' 28 diem Jan.
in

in Conditione p̄dicta' sup̄ius menc̄, Adq̄
nulle sc̄te Accōnes deba trans hille Ob-
ligationē Judic̄ Executionē & al̄ quecunq̄
orta fuer̄ p̄ alio vel aliquo p̄text vel colore
C. III. Iūn in Conditionē ejusdem script̄
Obl̄ sup̄ius nōiat a die dat̄ script̄ Obl̄
p̄dicta' hucusq̄ Et hoc idem C. III. sen
parat̄ est verificare, Unde per̄ judic̄,
fi, &c.

Et p̄dicta' H. B. p̄cludi non, Quia dic̄
qđ bene & verum est qđ Arbitratores
p̄dicta' in Conditione p̄dicta' sup̄ius nōiat
nullum fecer̄ Arbitrium ordinatōn̄ sive
judic̄ de & sup̄ p̄missis in Conditione
p̄dicta' sup̄ius menc̄ modo & forma put̄
p̄dicta' C. sup̄ius inde plitando allegabit,
sed idem H. ulterius dic̄ qđ Arbitrator
post confectiōnē script̄ Obl̄ p̄dicta' scilicet p̄se-
dicta' 23 die Jan. in eadem Conditione
sup̄ius menc̄ apud J. p̄dicta' in Com̄ p̄se-
dicta' debe eligerunt quendam f. D. de J.
p̄dicta' gen̄ existēd̄ hoēm indifferēd̄ fore
Umpiratorē ad faciendū finalē finem deter-
minatōnē & judicium int̄ partes p̄dicta' de
& sup̄ p̄missis in Conditione p̄dicta' sup̄ius
menc̄ secundum formā & effectū Condi-
tionē ill̄, Qui quidem Umpirator sic elect̄
postea & ante p̄dicta' 28 diem Jan̄ in Con-
ditione p̄dicta' sup̄ius menc̄ scilicet 27 die
Jan̄ Anno Domini sup̄radicta' apud J.
p̄dicta' in Com̄ p̄dicta' accepto sup̄ se onere
arbitrandi ordinandi & finalē determi-
nandi p̄missa p̄dicta' in Conditione p̄dicta'
sup̄ius silit̄ menc̄ p̄ quoddam scriptum
suum Umpiraq̄ indentat̄ sub manu &
sigill̄

Repl̄ that
the Umpire
made one.

Breach.

sigill' suis Curieq; dicti Dom' Regis nunc
 hic ostens' cujus Dat' est eisdem die &
 Anno Ordinabit arbitrabit determina-
 bit & adjudicabit de & sup eisdem pmissis
 qd, (Ec. setting forth the Award) Et pdict'
 H. in facto die qd pdict' C. III. modo
 Def' postea scilicet pdict' 27 die Jan' Anno
 supradicto apud J. pdict' in Com' pdict'
 huit notie de Arbitrio pdict' in forma
 pdict' fact', Quod pdict' C. III. non sol-
 vit p'fat' H. B. pdict' 61. sup 29 diem
 Jan. secundum form' & effectum Arbitrii
 pdict', Et hoc, &c. Unde per iudic' & de-
 hum, &c. Def' moratur in Rege, Et
 Quer' jung' in morat', 1 Saund. 61. &c.

The Condition is to abide the Award of
 Two Arbitrators of all Actions, &c. so that
 the Award be made at or before the 23d Day
 of *January*. But if the Arbitrators shall not
 agree upon their Award, that then they shall
 choose and elect an indifferent Man, and they
 shall stand to his final End, Determination,
 and Judgment, which he shall give and deter-
 mine on or before the 28th of the said *January*,
 under his Hand and Seal, then this Obligation
 shall be void, &c.

Upon the Argument it was objected, that
 the Defendant is not bound to perform the
 Award of the Umpire, because the Condi-
 tion in ea parte was void and insensible, for
 the Words are rather directive than conditional;
 and it is also insensible, for that it is said, That
 the Arbitrators shall choose an indifferent Man,
 and they shall stand to his Award; which
 Word

Word [*they*] in this Place being in the Plural Number, signifies the Arbitrators, and not the Defendant. Also it doth not appear upon what Matter the Umpire ought to make his Award, for 'tis not limited by the Condition to be made of the Premisses; so that the Defendant is not by the Words to perform the Award, and would be absurd to say, That the Defendant shall be bound by the Bond that the Arbitrators shall perform the Award of the Umpire; and it could not be extended, that the Word [*they*] shall refer both to the Plaintiff and Defendant, for then the Defendant shall be bound that the Plaintiff shall perform the Award; which is more absurd, and against the Intention, that the Plaintiff shall have Power to make the Defendant forfeit his Bond *nolens volens*. And although generally, if a Condition be altogether insensible and void, the Bond shall be single, yet in this Case here is a good Condition notwithstanding that these Words are insensible, for the first Part of the Condition to perform the Award of the Arbitrators is good, and is a proper Condition, which is enough to defeat the Obligation; and if the Defendant had perform'd it, or is excused from it by the Law, if they had not made any Award, (as in this Case) the Bond is saved; and for that the Words are deficient in the other Part of the Condition, the Intention of the Parties will not serve, as appears by the Book, 39 H. 6. 10. a. But it was resolved and adjudged by the Court, that the Condition in *ea parte* was good enough, though it was not so properly express'd; and that the Defendant had forfeited his Bond for not performing the Award

Note.

Award of the Umpire. And they said, that any Words, by which the Intention of the Parties may appear, are sufficient to make a Condition of a Bond; because that if the Words, although they are improper, shall be construed void, and not a Condition, then in most Cases, and perhaps in this Case, the Bond shall be single, and in Force against the Defendant, although that he had perform'd the Condition of it, according to the Condition of the Parties, and the Condition being for the Benefit of the Defendant, shall be construed favourably for his Advantage; and although here such a Construction doth prejudice the Defendant, yet the Law is the same in all Cases, and may not be altered in this particular Case. And Judgment was given for the Plaintiff. 1 Saund. 65, 66.

Judgment
pro Quer'.

The Defendant prays Oyer of the Condition, and that of the Award. The Plaintiff sets forth a verbal Award; and the Defendant says he offered to pay, and tendered a general Release; and that the Plaintiff refused to accept them, &c. Lev. Ent. 44, &c.

Bar.

ff. **E**t p'dict' C. T. p. H. M. Att' suu
ven & defendi vim & injur quan-
do, &c. Et pet' audit' scripti p'dict', Et
ei legitur, &c. pet' etiam auditum Con-
dition' ejusdem scripti, Et ei legitur in
hec verba, The Condition, &c. Quibus
lectis & auditis p'dict' C. T. pet' auditum
Arbitrii p'dict' in Conditione p'dict' menci-
p' Arbitrator' p'dict' fact', Et p'dict' C. die
qd' post confectio'n' script' Obl' p'dict' &
ante

ante p̄dict' 23 diem R. tunc pr' sequen
scit 22 die R. Anno Regni dia' Dom
Reg nunc 32 supradict' apud A. p̄dict'
in Com p̄dict' p̄dict' C. R. W. M. H. W.
& G. H. Arbitratores in Conditione
p̄dict' nōiat accept' sup se onere arbitran-
di de & sup p̄missis in Conditione p̄dict'
menc' p verba absq; scripto de & sup eis-
dem p̄missis arbitraver' int partes p̄dict',
Qd, (Ec. setting forth the Award.) Quo
lecto & audito idem C. T. die qd p̄dict'
C. accon suam p̄d vers' eum here non de-
bet, Quia die qd bene & verum est qd
Arbitrator p̄d accept' sup se onere arbi-
trandi de & sup p̄missis, p̄d 22 die Rost
Anno 32 supradicto p verba absq; scripto
arbitraver' de & sup p̄missis int partes
p̄d modo & forma p̄d put p̄d C. supius
allegavit sed idem C. T. ulterius die qd
ipse immediate post publicacōm Arbitrii
p̄d p Arbitrator p̄d sic ut p̄fertur fact
scit p̄d 22 die Rost Anno 32. supradict
apud A. p̄d obtulit ad solvendi eidem C.
p̄d 20 s. ei p arbitrium p̄d p eund C. T.
solut fore arbitrat & adtunc & ibm scribi
fecit & causabit quandam genalem Re-
laxacōm p quam idem C. T. p se Exec
& Adm suis remisit relaxabit imppetum
quiet clam eidem C. G. Exec & Adm
suis oia & oiod Accōn & Accōnes real
psonal sive mixtas deba debet Bill Obli-
gacōnes sumam sive sumas pecunie sectas
molestacōn (Anglice Troubles) judiciale
cuōn bzia Erro Querelas trans' &
demandi quecunq; que vers' p̄d C. Exec
vel Adm suos adtunc hui antetunc hui-
set

After a ver-
bal Award
set forth.

That Defen-
dant offer'd
to pay, &c.

set & imposterum here clamare seu de-
mandare potuisset de p vel concernen
aliquam mater' sive Actionem causam sive
colorem Actionis quacunque a principio
mundi usque diem dat scripti Relaxationem
pō, Et eandem generalem Relaxationem ad-
tunc & ibi sigillabit & ut factum suam
eidem C. adtunc & ibi deliberare obtulit
secundum formam & effectum Arbitrii pō,
Quos quidem 20 s. nequeon pōia' scripte
Relaxationem pōia' C. de eod' C. recipe &
acceptare secundum formam & effectum Arbi-
trii pōia' adtunc & ibi penitus recu-
sabit, Et hoc parat est verificare, Unde
per iudic' si pōia' C. Actionem suam pōia'
vers' eum here debeat, &c.

Repl' that he
offered, but
yet had not
paid.

Et pōia' C. G. die qd ipse pcludi non,
quia die qd bene & verum est qd pōia'
C. C. obtulit solvere pōia' C. G. pōia'
20 s. ut p̄fertur arbitrat' fore solut' p
p̄fat' C. C. put idem C. C. sapius al-
legabit sed idem C. G. ulterius die qd
postea & ante diem impetrat' b̄ris Ori-
ginal' ejusdem C. G. in hac parte scribit
II die Apd Anno Regni Domini Regis
nunc 33 ipse idem C. G. apud A. pōia'
requisivit p̄fat' C. C. solvere eidem C. G.
eodem 20 s. ei p ipm C. C. ut p̄fertur
arbitrat' fore solut', quos quidem 20 s. ei
solvere pōia' C. C. adtunc & ibi peni-
tus recusavit & nondum solvit contra
formam & effectum Arbitrii p̄dicit, Et
hoc, &c. Unde per iudic' & debum, &c.

Demur'.

Des' moratur in Rege, Et Quer' jung
in morat.

Per Cur', The Replication was idle; for Replication the first Refusal of the 20 s. being a Collateral adjudg'd idle. Sum to the Bond was lost for ever, 9 Co. 79. Co Lit. 207. a. Lit. Sect. 338. But then it was resolved, That the Bar was ill, answering but to part, scit, the 20 s. to be paid by himself, and not to the Sums to be paid by the others, and he is responsible for the whole; and where the Defendant pleads a Collateral Matter which is insufficient in Law, the Plaintiff need not assign any Breach, wherefore Judgment Yet Judgment pro Quir' was given for the Plaintiff. Vide 3 Lev. Rep. 24.

Qd' Arbitratores nullum fecer' Arbitrium deliberand' partibus apud S. Repl' qd' duo Arbitrator' fecer' arbitrium & assign' Breach. Def' demurr'. 1 Saund. 163, &c.

ff. Quibus lectis & auditis idem C. A. Bar per null' die Action non, quia die qd' pdict' Arbitr' fact'.
U. B. C. R. & R. G. Arbitrator' pdict' in Conditione pdict' supius noiat sup vel ante pdict' 16 diem Martii in Conditione pdict' spec' nullum fecer' Arbitrament' in scriptis de & sup pmiss' pdict' parat deliberandi partibus pdict' videlt apud Thomam pdict' A. M. scriptoris scituat in G. C. videlt in paroch' Scti P. le Pooz in Warda de B. London, secundum tenorem & effectum Condition' pdict', Et hoc, &c. Unde, &c.

Et pdict' A. S. die precludi non, quia Repl' that die qd' post confectioem scripti Obi pdict' Two of the & ante diem exhibicioem bille pdict' A. pre- Arbitrators made an Award. dict' scit pdict' 16 die M. Anno Regni Domini Regis nunc 19. supradicto in Con-

Breach as-
sign'.

Demur'
eum Causis.

Conditione predicta' supius menci' apud
predicta' paroch' Sci. P. (Ec.) predicta' T. B.
& C. R. duo Arbitrator' in Conditione
predicta' supius notat', accept' sup se onere
arbitrandi int' partes pdicta' adtunc &
ibm fecer' Arbitrium suu' int' partes
predicta' de & sup premis' in Conditione
predicta' supius menci' in quodam scripto
indentat' geren' dat' eisdem die & Anno
sub manibus & sigillis ipsor' T. B. &
C. R. predicta' adtunc parat' deliberandi
partibus predicta' videlicet apud predicta'
shopam predicta' A. M. scriptoris scituat'
infra G. C. predicta' in T. predicta' scilt' in
paroch', (Ec.) Per quod quidem scriptum
Arbitrii iidem T. & C. R. duo Arbitra-
tor' predicta' recitan' qd' cum, Ec. setting
forth the Award made, scilt' predicto 16 die
Martii, Ec. and Breach for Non-payment of
the Money awarded. Des' moratur in Lege,
Et quer' jung' in morat' ut postea.

Note, The Bond was to perform an Award,
if made by the Three, or any Two of them,
on or before 16 Martii. Defendant pleads Nil
Award fact'. Plaintiff replies, That Two of
the Arbitrators made an Award, scilt' pdictis 16
die Martii, Ec. To which the Defendant
demurr'd, Et p' Causis, Et qd' p' scrip-
tum Arbitrii predicta' in Repl' predicta' su-
pius mentionat', liquet & apparet qd'
predicta' scriptum Arbitrii fact' fuit p' om-
nes Arbitrator' in Conditione script' Obl'
predicta' spec', sed non apparet p' scriptum
Arbitrii predicta' qd' predicta' G. un' Arbi-
trator' predicta' signavit sigillabit publi-
cabit

tabit vel delibabit, idem script' Arbitrit,
Et qd' p'edict' Arbitrium in diversis lo-
cis est defectivum & qd' Replicatio p'c-
dict' est incerta & caret forma, &c.

The chief Objection upon the Argument was, That the Plaintiff had not precisely al-
ledged the Award to be made 16 March, but only by a *Scilicet*, which is not traver-
sable, though the Time was Matter of Sub-
stance. But the Court was of Opinion, that the *Scilicet* was sufficient, and the Matter thereby positively enough alledged, and they would not intend but the Award was made the same Day mentioned by the *Scilicet*, that is to say, the said 16th Day of *March*, according to the Condition, and upon no other Day. And the Plaintiff had Judgment per tot' Cur, 1 Saund. 170.

If *scilicet* be traversable.

Judic' pro Quer'.

Placita, &c. sur Arbitrement secundum,
Lut. Ent. 1 & 2 pt.

ff. **D**Ebt upon Bond against an Executor to perform an Award. Bar p null fec' Arbitrium. Repl' & monstra' Arbitrium, by which the Defendant's Testator was to pay the Plaintiff 24 l. 2 s. 10 d. $\frac{1}{2}$. upon the Delivery of the Award. Breach, that the Testator did not pay upon the Delivery of the Award, without saying vel unquam postea, 1 Lut. 389, &c. Def' moratur in Rege.

The chief Matter which was insisted on for the Defendant was, that the Breach was not well assigned by the Replication; because that although the Award is, that the Defendant shall pay the Money upon the Delivery of the

Obj. to the Repl' of Payment upon Delivery.

& 2

Award

Award to him, yet by a reasonable Construction of the Award, the Law will allow him a reasonable Time to pay the Money, for otherwise the Award might be deliver'd to him upon his Journey upon the Highway, far from his own Habitation, at which Place and Time it cannot be presumed that he had Money to pay, 18 E. 4. 21. Pla. 31. Rolls Condi. nu. 3, & 4. And if it should be so, that the Defendant shall have reasonable Time after the Delivery of the Award to him to pay the Money; then it follows that the Breach assign'd by the Replication is too strict and narrow. And the Breach ought to have been assigned, *Quod denar non fuer solut sup deliberation Arbitrii pcedi vel unquā postea*. But the Opinion of the greater Part of the Court was, That the Breach was well assign'd, and that it shall not be intended that the Money was paid afterwards; and if it had, to have been paid in a reasonable Time after; that it ought to have been pleaded by the Defendant. And the Plaintiff had Judgment. *Vide 1 Lut. 393, &c.*

Judgment
pro Quer'.

¶ Barr p null Award fait. Rep^r, and shews the Award, and avers that the Plaintiff was ready at the Day and Place, and tender'd the Money awarded, and that none was there ready to receive it, and that he was always ready afterwards; and assigns Breach, that the Defendant had not delivered him quiet Possession of the Messuage, &c. Defendant demurs. 1 Lut. 520, &c.

Two Exceptions were taken in this Case by the Defendant's Council: First, That the Submission

mission is Conditional, so that the Award ought to be final, which is not so in this Case, for the Award as to the Releases is void; for by them all Matters to the 12th of *August* (which is a long Time after the Submission) are to be released, and the Award of the said Releases is void, and by Consequence the whole Award, *sed non allocatur*. For although the Releases are void for that Cause, yet being that other Matters are awarded to each Party, the Award is good as to the Residue; and for that these Cases were cited, *viz. Nuby vers' Sabb. 3 Cro. 809. Lea vers' Paine, Mo. 885. & Hob. 191.*

Obj. against the Time of Release.

Other Matters awarded.

The Second Exception was, That the Condition of the Bond of Submission was, that if the Award was made, &c. ready to be deliver'd, &c. to the Parties, &c. and it is not averred in the Replication that the Award was ready to be deliver'd to the Parties, *sed non allocatur*; for when 'tis once made, 'tis ready to be deliver'd.

Against the Time of Delivery.

Vide 3 Mod. Rep. Rowsby and Manning's Case, which is the same Case in Effect as to this Point, and ruled accordingly. But there is another Reason given, *viz. That the Condition being that the Award should be delivered to the Parties, or such of them as should desire it, it ought to be desired; and then if it be denied, the Party might plead the special Matter. Vide 1 Lut. 524. Vid. 3 Lev. Rep. 188.*

To be delivered, if desired, &c.

ff. **D**Ebt upon a Bond to perform the Award of an Umpire. Bar, That the Umpire awarded the Defendant to pay the Plaintiff 6*l.* and that after that, he should release to the

Award over.

Traverse.

Plaintiff, &c. and should permit the Plaintiff to enjoy such a Close, with an Averment of the Payment of the said 6*l.* &c. and that he was always afterwards ready to make the Release, and that he had not disturbed the Plaintiff in the Enjoyment of the said Close. Replication confesses the Award *pro*out, but that he awarded over, That upon the Payment of the said 6*l.* the Plaintiff should make the Defendant a general Acquittance; and then he avers that the Defendant had not paid the said 6*l.* but takes no Issue upon it, but traverses the Umpire had awarded only as the Defendant had alledged, 1 *Lut.* 525.

It appears that this Case was several Times strongly argued by the Council on both Parts; and the Council for the Defendant said. That (as this Case is) there ought to have been a sufficient Breach of the Award made by the Umpire alledged in the Replication, and cited the Cases of *Jeffrey and Guy*, *Yel.* 78. *Hayman and Gerrard's Case*, 2 *Saund.* 102, and 326. *Fuller and Sparkman's Case*, 3 *Cro.* 66. *Hob.* 199. But in this Case, there was no sufficient Breach assigned; for the Defendant had shewn an Award made by an Umpire, by which (*int' alia*) it is awarded that the Defendant shall pay to the Plaintiff 6*l.* and the Plaintiff having replied that the Defendant had not paid it, he ought to have taken Issue thereupon, and not to have concluded with an *Hoc parat' est verificare*; and for that cited the 2d of *Saund.* 188. *Roberts and Marriot's Case*. But on the other Part it was said, That although the Replication is ill, because the Plaintiff had not taken Issue on the Payment, and also for that the Plaintiff by his
Tra-

Traverse in his Replication had lock'd up the Defendant so that he could not rejoin; yet the Bar is ill, for that by the Award the Defendant was to seal and execute to the Plaintiff a general Release; and he says, *quod semper paratus fuit*, whereas he ought expressly to aver that he had done it, or that he had tender'd him a Release, and he had refused it, for the Tender of the Release ought to come on the Part of the Defendant, as it is adjudged in *Baker and Bulstrode's Case*, 1 *Ver* 255. and therefore that there was no need to make a Replication; and then the first Fault being in the Bar, which in Effect is no Bar, the Replication to it shall not hurt.

Chief Justice *Treby* was of Opinion, That it was not requisite in this Case to shew any Breach, because the Bar was meerly idle and impertinent, for it appears not that the Umpire had any Authority to make an Award; and it is all one as if he had said, That the Arbitrators had not made any Award before the Submission, or that a meer Stranger had not made any Award: And the Plea here admits that the Arbitrators might have made an Award, for it is said in the Plea, that Two of the Arbitrators had not made any Award before the 15th Day of *February*, whereas by the Submission they had Authority to make it upon the said Day, and he might have demurr'd to such a Plea; and although he had replied to it, yet the Defendant having demurr'd to the Replication, the Plaintiff may take Advantage of the Imperfections of the Bar, because therein is the first Fault. But he admitted, that if the Defendant had pleaded *Quod Allegat fact*, that

General Rule. then a sufficient Breach ought to have been assigned. But Justice *Powell* was of a contrary Opinion, and he said, That it was true, that it was a general Rule that Judgment shall be against him that commits the first Fault; but that it is not so in the Case of an Award. If the Defendant had pleaded *Non submisit*, or such Collateral Matter, there need no Breach to have been assigned, but the Plaintiff might follow the Defendant in his Way: But when the Defendant pleads *Nul Award*, or that which amounts to it, there Breach ought to be assigned. And the Plea here amounts to *Nul Award fait*, and therefore a good Breach ought to be assigned. The other Judges deliver'd no Opinion in the Case, and thereupon the Plaintiff upon Petition had Leave to discontinue.

Traverse.

Vide (says the Reporter) *Linsey* and *Astrey's* Case, 2 *Bulst.* 38. and *Godbolt* 255. which is a notable Case, as well to the Traverse in this said Case of *Strike* and *Bensley*, as to the other Points thereof. See 1 *Lut.* 528, 529.

Award by the Umpire.

ff. Defendant pleads, That neither the Arbitrators, nor the Umpire elected by them, made any Award. Plaintiff confesses that the Arbitrators made no Award, but shews an Award of the Umpire, and Breach for Non-payment of 5 *l.* The Defendant demurs. 1 *Lut.* 530.

Two Exceptions were taken to the Award :

1. That the Award that all Suits between the Parties, or any others on their Behalf, should cease, was void as to Strangers; and the Arbitrators

bitrators intended the ceasing of the said Suits to be Part of the Consideration of the Payment of the said 5*l.* for Cost for the Defendant; and inasmuch as he could not have the full Benefit intended for him, the Award is void in toto. 1 *Rolls Abr.* 259. nu. 10. *Pope and Skinner's Case*, 2 *Saund.* 292.

2. That the Submission here is conditional, (though it be only *Ita qđ arbitriū fiat ante tale tempus*) as if it had been *Ita qđ fiat de pmissis pđict' ante tale tempus*; and so it is adjudged in *Inglet and Risden's Case*, 3 *Cro.* 438. and then if it be not final, it is void in toto, *Harris and Painter's Case*, *Rolls Arbitrement* 261. nu. 7. But this Arbitrament is not final, for thereby 'tis awarded that the Defendant shall pay to the Plaintiff 5*l.* towards his Charges at Law, and the Apothecary's Bill, and other his Charges; so that for Part of them the Plaintiff is at Liberty to sue sed non allocatur; and the Plaintiff had Judgment. Ita qđ', &c.
To pay to-
wards Char-
ges.

And the Court said, That the Words [towards his Charges] shall be taken in Satisfaction of all Charges. *Vide* 1 *Lut.* 533.

§. Debt upon a Bond to perform the Award of an Umpire, so that the Award be made in Writing, or by Word of Mouth, before Two Witnesses. *Bar per Pull Agard* fait, by the Arbitrators, or by the Umpire. *Repl.* That the Umpire made an Award ore tenus, but 'tis not said before Two Witnesses. Defendant demurs; and Judgment for the Defendant for that Fault in the Replication. 1 *Lut.* 536, 538.

H. Bar

¶ Bar p Dul Agard fait. Repl, That the Arbitrator awarded that the Defendant should pay to the Plaintiff 12 l. tali die, Et qđ Def' abduceret equam & pullam suam infra unam septimanam a predict' G. the Plaintiff, and Breach for Non payment of the 12 l. Defendant demurs, Et Quer' jung' in mozat' 539, &c.

Award for Defendant to take Goods in the Plaintiff's Possession.

By the Opinion of Three Judges against the Opinion of Justice *Blencow*, Judgment after 2 Arguments was given for the Plaintiff upon this Reason, viz. For that it appears by the Award, that the Plaintiff at the Time of making thereof had the Possession of the Mare and Colt; which Possession shall not be intended tortious, but much rather a legal Possession, as for Damage Fesant, Bailment, or any other such Matter, for which the Plaintiff might have justified the detaining of them, and then the Award would be mutual. But a Writ of Error was brought. *Vide 1 Lut. 540, &c.*

¶ The Defendant pleads *Dul Agard fait per Arbitratores*, but that they nominated an Umpire, who awarded that the Defendant should pay to the Plaintiff 40 l. which he had not paid. The Plaintiff replies, after Oyer of the Award, that the Defendant had not paid him the said 40 l. Et hoc petit, &c. Defendant demurs. *1 Lut. 541.*

Two Objections were made upon the Argument of this Demurrer:

1. That the Award was only on one Part. But the Court resolved, That forasmuch as that

that the Umpirage recited that there were Dealings between the Plaintiff and Defendant, and that the Plaintiff had paid to the Defendant all that was due to him, and then order'd the Defendant to pay to the Plaintiff that which was due to him, it should be intended that it was in Satisfaction of the Debt due by the Defendant to the Plaintiff. Intendment of Satisfaction.

2. It was objected by the Defendant's Council, That the Arbitrators having Power to make their Award on or before the 21st of May, and they having elected an Umpire before that Day, viz. the 20th Day of the said Month, from which Time the Arbitrators had no Power to make such Election, and by consequence the Umpire had no Authority to make an Award, for the Arbitrators had Power until the End of the said 21st Day of May to make their Award. *Sed non allocatur*, because no Award being made by the Arbitrators, the Award of the Umpire is good, and the Plaintiff had Judgment, 1 *Lut.* 544. For this last Point the Reporter refers to *Cro. Car.* 263. *Fennings versus Vandiput*, 1 *Rolls Abr.* 262. nu. 5. 2 *Jones* 167. *Case & Dures*, & 2 *Mod. Rep.* 169. 2 *Saund.* 133. all which are Authorities for the Resolution here. But (says he) see also 1 *Levinz* 285. *Copping vers' Haverrard*, & 302. *Donavan vers' Mascall*, 1 *Rolls Abr.* 262. nu. 6. *Vide* 3 *Lev. Rep.* 163. As to an Umpire's Authority.

¶ Debt upon Bond to perform an Award, *Ita qd' fiat*, *ita qd' fiat de pmissis*. *Bar p nul Award* *&c.* *fait*. The Plaintiff by Replication shews the Award; and assigns Breach, that the Defendant

dant had not paid him 11 l. secundum formam & effectum Arbitrii predicti. The Defendant demurs, 1 *Lat.* 545.

How the
Breach ought
to be assign-
ed..

Upon the Argument an Exception was taken to the Replication, that the Breach was not well assigned; for by the Award the Defendant is to pay to the Plaintiff 11 l. at or before the 7th Day of May; and the Breach assigned is, for that the Defendant had not paid the said 11 l. secundum formam & effectum Arbitrii predicti, whereas he ought to have alleged that he had not paid the 11 l. sup vel ante eundem diem, according to the Words of the Award, so that the Defendant might have taken a single Issue either upon the one or the other, and cited *Dier* 243. b. which Book seems to be an Authority in the Point. *Sed non allocatur.* For though the Court declared, That it had been better if the Breach had been assigned according to the Words of the Award, yet they were of Opinion, that the Breach was well enough in Substance. *Mes* (saith the Reporter) *Vide Brooks and Dean's Case, 1 Levinz. 145. & 3 Lev. 293. Walnough & Holgate's Case, 2 Mod. Rep. 269. in Harwood's Case, Et nota:*

Release a-
warded, &c.

Divers Exceptions were taken to the Award it self, and Answers were made to every Particular by the Council on the other Part. And the Opinion of the greater Part of the Court was, That the Release by the Award to be made by the Plaintiff to the Defendant, if it had been executed, had been a Release to the Bond of Submission; and that the Submission was conditional as well as to the Matter of the Award,

Award, as in respect of the Time to make the Award: Yet notwithstanding they all were of Opinion, that the Award was good, because there was a particular Satisfaction and mutual Recompence, as to every particular Matter awarded. *Vide 1 Lut. 549.* Mutual Recompence.

¶ The Defendant pleads in Bar, No Award or Umpirage made. Plaintiff replies, and shews the Award of the Umpire, and Breach, that the Defendant had not paid him 12 l. 15 s. Defendant demurs. *1 Lut. 550.* Award by Umpire.

1. In this Case it was agreed by the Council on both Parts, that the Submission being Conditional, with an *Ita qd' fiat de pmissis*, if it appears by the Award it self, that it was not final in respect of all Matters within the Submission to their Award, it is ill in the whole; and so it was resolved by the Court. *Ita qd' fiat, &c. conditional.*

2. It was resolved, That the Award to deliver Three several Boxes, and several Books, was altogether uncertain and void, unless it had been said what Books were in the said Boxes.

3. It was resolved, That although no Time is appointed by the Award for the Execution of the Releases on both Parts, nor is it said that it shall be done upon or after the Performance of the other Parts of the Award; yet it was resolved that the Award being void in respect of the Delivery of the Goods, neither the one nor the other was obliged to perform it, for then the Goods would be released without any Satisfaction, which (as was said by one of the Justices) would be absurd. Release.

Another

Reservation
by the Um-
pire.

Another Point was moved in the Case, Whether the Umpirage was not void, by reason that the Umpire had reserved to himself and the Two Arbitrators (who were chosen to determine the Matters before them) to make a Valuation of the Goods which were lost or mislaid: And as to that, Chief Justice Trevor and Justice Blencow were of Opinion, that it was a judicial Thing, and not merely ministerial, and that the Award was therefore void. But Justice Powell was of another Opinion; but they all agreed that the Judgment should be given for the Defendant, and so it was. *Vide* 1 *Lat.* 554. where several Authorities are afterwards refer'd to.

Award to be
under Hands
and Seals.

Debt upon Bond to perform the Award of Two Arbitrators, to be under their Hands and Seals, &c. Bar p nul Agard fait: *Hept*, That the Arbitrators, *ceper super se onus Arbitrii predicti * per scriptum suum indentat, &c.* arbitrat fuer' ordinauer', &c. without the Word [Et], that the Defendant should pay to the Plaintiff 66 l. at the then Dwelling-house of the Plaintiff in *Senock, predicti, &c.* *Senock* being not before mentioned, 1 *Lat.* 558. *Def' moratur in Lege.*

These Exceptions were taken for the Defendant by Sir Nathan Wright.

1. That it was not averr'd that the Award was under the Hands and Seals of the Arbitrators, but only *p scriptum indentat' sigillis eor' sigillat', &c.*

2. That

2. That after the Words in the Replication, viz. *Quod Arbitratorum ceperit super se onus Arbitrii predicti*, the Word [Et] should have been inserted after those Words, and before the Words [*p script*, &c.] and that for want thereof it does not appear that the Award was made in due Time.

Word [Et] omitted.

3. That the Money awarded to be paid by the Defendant to the Plaintiff, is awarded to be paid at the House of the Plaintiff at *Senock* (*predicti*), and no such Place is named before.

Predicti.

1. To the First, it was answer'd by Serjeant Selby, That although in the first Part of the Award it was not alledged that it was made under the Hands and Seals of the Arbitrators, yet it is afterwards said, That it was ready to be deliver'd under their Hands and Seals, which is sufficient.

2. To the Second, it was answer'd, That the Word [*Arbitratorum*] is a Substantive which governs all the Words in the same Sentence, and is all one in Effect as if it had been said, *Quod Arbitratorum predicti ceperit super se, & Arbitratorum predicti arbitraverit Arbitratorum, & Ordinaverit Arbitratorum predicti determinaverit, & Arbitratorum predicti adjudicaverit, &c.*

3. To the Third it was answer'd, That the Word [*Predicti*] being annexed to the Word [*Senock*], (this Word [*Senock*] being not mentioned before) was void, and cited 3 *Bulst.* 198, 199. And so notwithstanding the Exceptions, the Plaintiff had Judgment, 1 *Lat.* 560, 561. And

Predicti.

Judgment pro Quer.

he adds, that it was affirm'd upon Writ of Error in B. R. as Serjeant Selby had informed him.

¶ Defendant pleads, *Dul Agard fait, Repl, & monstre le Agard*, and Breach for Non-payment of 30 l. *Rejo'*, That the Plaintiff T. non submisit. Defendant demurs. 1 *Lut.* 571, &c.

When an Award shall be good by reason of Equity, &c.

An Objection was made, That it appear'd by the Condition of the Bond of Submission that the Plaintiff *Templeman* was no Party to the Submission, for that the Condition is, That if the Defendant *Clemence*, *staret ad & perform Arbitrium, &c.* But the Plaintiff's Council answer'd, That here was a good Submission by *Templeman*, and that in Effect the Case is only this: A Bond is made by the Defendant to *Elizabeth Templeman* in Trust for the Plaintiff *Templeman*, which *Elizabeth* is afterwards married to the Plaintiff *Lynch*. Then a Bond is made by the Defendant to both the Plaintiffs, with a Condition that the Defendant shall stand to the Award of the Arbitrators indifferently elected, as well on the Part of the Defendant, as on the Part of the Plaintiff *Lynch*, to arbitrate all Matters in Controversy between the said Parties, or either of them. Now when *Lynch* married with *Elizabeth Templeman*, who was Trustee for the Plaintiff *Templeman*, *Lynch* becomes Trustee for *Templeman*, then when *Templeman* joins with *Lynch* his Trustee in the taking of the Bond of Submission, it appears that he had fully assented and agreed, that the Matters in Controversy

verfy touching the Bond taken by him in the Name of *Elizabeth Templeman*, should be determin'd by the Arbitrators, which amounts to a Submission to their Award. Upon the whole Argument, Judgment was given for the Plaintiff; for most of the Judges were of Opinion, That a Court of Equity would make effectual all that was in the Award, for which there was any need of Equity: *Vide 1 Lut. 575, &c.* And there it is shewn where an Award shall be good by reason of Remedy in Equity, and where a Thing awarded to be done to a Stranger to the Submission shall be good; also where an Award shall be good, though a Release is awarded, by which the Bond of Submission shall be released.

Award of a Thing to be done to a Stranger.

§. Bar upon a Bond to perform an Award upon a conditional Submission. *Bar*, That the Arbitrators awarded, that the Defendant, on or before the 15th of *January* next following, should pay the Plaintiff 50 *l.* and that the Defendant, at such Time and Place as the Plaintiff should appoint, should make publick Confession of his Offence for beating the Plaintiff; that he had paid the said 50 *l.* and that the Plaintiff had not appointed any Time, &c. *Repl.* That the Arbitrator, within the Time limited by the Condition, fecit *Arbitrium suu*, &c. by which he awarded that the Defendant should pay to the Plaintiff 50 *l.* *p. cu. stagiis sette*, &c. and further awarded the Confession in the Bar to be made; and further, that upon the Payment of the said 50 *l.* the Parties should give Releases one to the other, and that he had appointed a Place and Time, &c. and had given the Defendant Notice, and that the Defendant had not paid the

Award mutual and reciprocal.

As to the
Time and
Place.

said 50 l. *Et hoc parat est verificare, &c.* Defendant demurs; and after divers Exceptions, the Replication was adjudged to be good. And the Opinion of the Court was, That the Award was good as to the 50 l. and that it was mutual and reciprocal, and that the Replication was good. But they were of Opinion, That the Award, as to the Appointment of Place and Time of the Submission and Acknowledgment of the Offence, was not good; but yet for the Reason aforesaid, the Plaintiff had Judgment. *Vide 2 Lut. 1597, 1601.*

¶ The Defendant pleads *Nul Award fait.* The Plaintiff shews the Award, and Breach for Non-payment of 28 l. 12 s. 5 d. Defendant demurs. *Vide 2 Lut. 1625, &c.* where another Person was Party to the Submission.

Where the
Rejoinder de-
parts from
the Bar.

¶ Debt upon a Bond to perform an Award, by which the Defendant was to pay to the Plaintiff 250 l. in full Satisfaction of his Part and Share of the Estate of H. P. at several Days. *Bar per nul Award fait.* *Repl.* and Breach, That the Defendant had not paid the 100 l. 25 Marcii. *Rejo.* That the said H. P. made a Nuncupative Will, and his Wife and M. the Wife of the Plaintiff, Executors, and that the Plaintiff's Wife died before the Submission, and the Controversy was between the Plaintiff and Defendant concerning the whole personal Estate of the said H. P. which was submitted, &c. but the Award was not of the whole Personal Estate. *Quer moztatur in Lege. 1 Lut. 382, &c.*

1. It was objected by the Plaintiff's Council, That the Rejoinder was a Departure from the Bar; for that thereby the Defendant had affirm'd,

affirm'd, that no Award was made; and by the Rejoinder, by a strong Implication, it is confess'd, That the Arbitrators made their Award, but that it was not made of the whole personal Estate of H. P. and cited 2 Saund. 489. *Roberts vers' Marriot*, 1 Sid. 180. *Morgan vers' Man*, Keilw. 175. pl. 8.

2. It was also objected, That the Rejoinder was apparently false, for thereby it is said that the Award was not of the whole personal Estate of H. P. whereas by the Award the 250 l. is awarded to be paid to the Plaintiff as his full Moiety, Portion, Part, and Proportion of the personal Estate of the said H. P. which is to be intended also to be in Satisfaction of his Share of all the said personal Estate. And moreover 'tis awarded, that upon Payment of the said 250 l. the Parties shall give general Releases one to the other; by which there is a final Award made as to all the personal Estate of the said H. P.

The Court was clearly of Opinion, That the Award was a full and final Award; and also it seem'd to them, that the Rejoinder was a Departure from the Bar, 1 Lut. 385, 386.

For Bars to Actions of Debt upon Arbitrement without Specialty.

§. Defendant pleads, 'Qd' fecit script' Obl' 'pro solutione denar', Repl' qd' non fecit. *Placit. Gen.* 277.

§. 'Bar, Per Stat' de Limitations qd' Action non accrevit infra sex Annos, 2 Saund. 62.

§. 'Demurrer al Narr' de Arbitrement, 2 Saund. 128.

*Bar de Arbitrio performand' in Cas', sur
Assumpsit.*

§. ' **D** Ef' confesse Submission & Arbitre-
' ment sed qd' quer' indebitat' fuit
' Def' in 4 l. de quibus Arbitrator antequam
' fec' Arbitrium habuit notic' & noluit facere
' quer' allocationem proinde. Quer' mora-
' tur. Et judic' pro Def' pur fault in Narr'.
' 1 Saund. 30.

§. ' Non Afs'. Et veredc'm pro quer'.
' Win. En. 471, alias 505.

§. ' Al part qd' solvit denar' secund' form'
' Arbitrii, al resid' Def' placitat' scriptum Re-
' laxationis. Repl' qd' non solvit & Issue,
' 1 Mod. Int. 57.

§. ' Protest' qd' Arbitrator' null' fecer' Ar-
' bitrium, pro placito qd' nullum Arbitrium
' deliberat' aut parat' fuit deliberari secund', &c.
' Repl', qd' Arbitrium factum fuit & parat'
' deliberari sub manu & sigill' Arbitrator', Et
' Exit' inde, 1 Mod. Intr. 58.

*Further Observations concerning Awards,
with several Authorities from the late Re-
ports relating to Award and Umpi-
rage, by Way of a Summary, &c.*

Umpire,
where bar'd
as to part.

IF the Parties submit themselves to the Award
of certain Persons, and if they cannot agree,
then to the Ordinance of another as Umpire:
If the Arbitrators make their Award of Par-
cels, the Umpire shall not make his Award of
the other remaining Part.

But

But if the Submission be such, that the Umpire shall make his Award of the Whole or Part, then it's said he may make Award of such Part with which the Arbitrators have not meddled.

39 H. 6. 10. a. 11. b.

In Debt upon a Bond conditional to perform an Award, to be made by Two by such a Day, and if they cannot agree, then to the Umpirage of A. B. so he award by the same Time: And 'tis there said, that where the Arbitrators and Umpire have the same Time, if either make an Award it is sufficient. But then all agreed, that an absolute Refusal of the Arbitrators should be alledged, as to say, That they altogether refused, and not to say that they did not, nor could not make the Award.

2 Keb. 562, 619. Siderf. 428. 1 Mod. Rep. 15.

See after.

If the Arbitrators do wholly desert it, the Umpire may Award; for if the Arbitrators desert only one while, they may take it up within the Time. Siderf. 455.

But where the Arbitrators are left to choose the Umpire in the same Time, and do so, they thereby relinquish their Power, especially where the Submission to an Umpire is upon their Disagreement, otherwise an Award by the Umpire within their Time is void. 1 Keb. 6. 848. 2 Keb. 714. 1 Mod. Rep. 274.

In Debt upon a Bond to perform an Award of Arbitrators, so as it be made by the Second of March, and if not agreed then, to the Umpirage of whom A. and B. elect, so as he award by the Fifth of March. It was objected, that the Umpire was elected but the Third of March; but the Court said, If he were elected on the Fourth, it was sufficient, 3 Keb. 387.

Where not barr'd.

When the Arbitrators and Umpire have the same Time.

Desertion by Arbitrators.

Arbitrators to choose an Umpire.

Umpire elected by Arbitrators.

Usual Course
of Submis-
sion.

Good Sub-
mission.

To pay to a
Third Person.

As to the
Arbitrators
Time before
Umpirage.

When they
may nomi-
nate an Um-
pire.

Submission to
Four to be
signified by
Two.

Note, That the usual Course is now by Bond, with a Time over for the Umpire, in case the Arbitrators make no Award.

What Things are necessary to make a good Submission, and a good Award, *Hard. Rep.* 43, 44, &c.

An Award that one of the Parties shall discharge the other from his Undertaking to pay a Debt to a Third Person, a good Award. *1 Mod. Rep.* 9. *2 Keb.* 546. *1 Cro.* 541.

Judge *Twisden* said, (upon a Motion in Arrest of Judgment, because an Award was not good) That the Umpirage could not be made till the Arbitrators Time were out; and if any such Power be given to the Umpire, it's naught in its Constitution, for Two Persons cannot have a several Jurisdiction at one and the same Time, *1 Mod. Rep.* 15. 274. *2 Keb.* 562. *2 Sand.* 129. *1 Sid.* 455. *1 Roll.* 261.

1 Cro. 263. Arbitrators may nominate an Umpire within their Time for making their Awards, so that the Chusing the Umpire doth not extinguish their Authority, as on or before the 19th of February. It is true, the Arbitrators might chuse him upon that Day, or before, but yet still they might have made an Award, and therefore he could not. *1 Mod.* 275. *2 Sand.* 132. See after.

Submission of an Award to Four, so that they made it by the 16th of November, and signified it under the Hands and Seals of Two of them, and then alledges the Award under Two of their Seals: To which the Defendant demurred, conceiving the Award to be void because the Submission was to Four. But the Court gave Judgment for the Plaintiff according to the Cases in *2 Cro.* 276, & 400. *Vide 1 Ven.* 50. *1 Roll.* 223, 375. *3 Bulst.* 62. *2 Keb.* 551, 580. If

If the Defendant be the Cause that no Award is made, it is as much a Forfeiture of his Bond, as not to perform it would be. 1 Vent. 71.

If Defendant hinders the Award.

In Debt upon Bond conditioned to perform an Award, Defendant pleaded *Nallum fecerunt Arbitrium*. Plaintiff replies, and sets forth the Award which did express the Bond of Submission to be dated the 17th of February, whereas it was dated the 10th of February; and for that misrecital the Defendant demurred. But the Court held clearly, that it did not hurt the Award. And so if the Submission had been of divers particular Matters, yet if they had meddled with the Things only submitted it had been well enough. 1 Vent. 184.

Date of the Submission Bond.

If no Place be mentioned in Pleading where the Award was made, it is naught, 2 Vent. 72. But the Plaintiff may shew in his Replication, that the Award or Submission was made at such a Place, 2 Brownl. 137. But where an Award is pleaded in Bar of a Trespass, a Place must be laid where the Submission was made, Cro. Eliz. 66. b.

Place of Award made.

That an Award may be by Word of Mouth; and he that sets forth such Award is not tied to Strictness of Words, but 'tis sufficient to shew the Effect and Subitance of what was Award. 2 Vent. 242.

But Note, The Condition of the Bond must be regarded. *Vide ante*.

An Award to pay the Charges of a Suit may be good though the Sum is uncertain, for it may easily be reduced to Certainty. *Id.* 243.

Award to pay the Charges of a Suit.

3 Lev. 18. *Vide postea*.

That where Money is awarded to be paid to a Man, and no mention made of his Executors, yet in case that he dies before, the

Executors.

Money shall be paid to his Executors; for an Award creates a Duty, and the Executor shall release where the Testator was awarded so to do. *Id.* 249.

*So that, &c.
how taken.*

If a Submission be conditional, with [*So that the Arbitrator arbitrate all Differences*], the Arbitrator may not make his Award of Parcel of the Differences, if he had Notice of more.

1 Saund. 32.

Simile:

Also if the Submission be conditional, with a [*So that, &c.*] and the Arbitrator makes no mention in his Award of Part of the Differences of which he had Notice, yet the Award is good, if he award general Releases on both Sides. *Id.* 33. (*1 Lev. 58.*)

*If all on one
Part.*

An Award where all is to be performed on one Part and nothing on the other, is void. *Id.* S. 326. *2 Saund. 190.*

*Arbitrement
a Specialty.*

An *Arbitrement* under the Hand and Seal of the Arbitrator, is a Specialty not limited by the Statute of *21 Jac. 1. c. 16.* *Vide 2 Saund. 65, 66, 67.*

Ley Gager.

A Man may wage Law against an Award under Hand and Seal, if the Submission was not by Specialty under the Hand and Seal of the Party that submitted to such Award. *Idem* 65, 74.

*Award and
Upirage li-
mited to the
same Day.*

If a Submission be to Arbitrators, and that if they disagree, then to an Umpire, and the Award and Umpirage are limited to the same Day, there the Power of the Umpire is void, unless that the Arbitrators disagree, and declare that they will not intermeddle afterwards. *Id.* 130, 132.

*Or to next
Day.*

If a Submission be to Arbitrators, so that they make their Award to Morrow, and if they cannot agree, then to an Umpire, so that he

he make his Umpirage to Morrow or next Day, in such Case the Umpire cannot make his Umpirage on the Morrow. *Idem* 130, 131.

The exprefs Agreement of the Parties by Submission may make an Umpirage good, although the same Time is limited for the Arbitrator, and for the Umpire to make their Award or Umpirage. *Idem* 132. Exprefs Agreement of Parties.

It was agreed by the Court, That the Arbitrators, within the Time limited to make their Award, may choofe an Umpire to make an Umpirage after the Time for their Award determined, according to the Case of *Jennings* and *Vandiput* in *Cro. Car.* 273. and in *Rol.* 262. *Idem* *Saund.* 133. *Vide ante.* Umpire when to be chosen.

If all Debts, Sums of Money, and Demands, are submitted to *Arbitrement*, the Arbitrators have Power to Award a Release of all Bonds, Specialties, Judgments, Executions, and Extents, by which the said Debts, Sums of Money, and Demands, are due. *Idem* 190. How a Release may extend.

Also in Debt upon *Arbitrement* the Defendant shall not avoid the Award, because a Release is awarded of all Bonds and Judgments, though Bonds and Judgments were not within the Submission, unless he shew specially that there were some Bonds or Judgments between the Parties. *Ibid.* Release of all Bonds.

An Award between *A.* and *B.* that *A.* should pay 10 *l.* to *B.* and 5 *l.* to a Stranger, and that *B.* shall give *A.* a general Release, the Award as to the 5 *l.* is void, but good for the Residue, because *B.* had no Prejudice, although the 5 *l.* were not paid to the Stranger, for nothing more than 10 *l.* was intended him, and for his Benefit. *Idem* 293. Where Award void in Part, and good in Part.

An Award that one of the Parties shall be bound in a Bond to the other, is good enough; but Award to find Sureties.

but not that he shall find Sureties to enter into an Obligation. *Idem* 337.

Several Actions for several Sums.

Upon a Promise to perform an Award, which was, that the Defendant should pay several Sums of Money at several Times, an Action lies for the first Sum, and new Actions for the other Sums as often as they shall become due. *Idem ibid.*

Award made good by Replication.

Defendant pleads an Award which is on one Part only. The Plaintiff replies, and shews the Residue, by which 'tis made sufficient. The Defendant cannot traverse it. 3 *Lev.* 164.

Release.

An Award to release all Demands generally, is intended Demands to the Time of the Submission, and good; but of all Demands to the Time of the Award is void. 3 *Lev.* 188, 344.

Several Differences cited, and the Award as to one.

Debt upon Bond to perform an Award, the Defendant pleads no Award: The Plaintiff sets forth the Award, citing Differences concerning a Houle, divers Elms and Arrears of Rent. And the Arbitrators, to make a final End, awarded the Defendant should pay the Plaintiff 4*l.* for all the Arrears of Rent; and adjudged good upon Demurrer, that the 4*l.* should be intended in Satisfaction of all, the others not appearing, but only by the recital of the Award. 1 *Lev.* 132, 133.

Award leaves out one Party.

Submission by A. and B. of one Part, and C. of the other Part; and the Award made only between A. and C. was adjudged void upon the Defendants demurrer. 1 *Lev.* 139.

Umpire.

Also there held, that the Words [*So that the Arbitrators, &c.*] does refer as well to the Umpire, 2 *Cro.* 278. 3 *Cro.* 838. The Plaintiff perceiving the Opinion of the Court to be against him, prays Leave to discontinue, which was denied him; for the Court permits Discontinuances in case of a Bond for Payment of

Discontinuance not allowed.

of Money, yet never in case of a Bond to perform an Award, unless upon extraordinary Occasions. *Ibid.* & 140.

Where the Arbitrators and Umpire, both named by the Parties, have the same Day, the Umpire cannot make any Award, as upon a Bond to perform an Award, *so that, &c.* at or before the Feast of St. Michael; and if they made none, then to perform the Umpirage of J. S. *so that, &c.* at or before the said Feast of St. Michael. The Defendant pleads, that the Arbitrators made no Award, neither did the Umpire make any Umpirage. The Plaintiff replies, No Award; but sets forth an Umpirage, and assigns a Breach upon it. The Defendant demurs; and the Submission was adjudg'd to be void. 1 Lev. 285.

Arbitrators and Umpire have the same Day.

Note, It was said, If it had been that if the Arbitrators made none, then to such Umpire as they should name might have been good, because by their Nomination of an Umpire they had waved the Submission to themselves; but then it seems it ought to be pleaded that the Arbitrators had refused to make any Award, and so here: Whereupon Judgment was given for the Defendant. *Vide ante,* and Dyer 347.

Submission waved by the Arbitrators.

1 Roll. Abridg. 261.

Submission to A. and B. and if they could not agreed, to such Umpire as they should elect, so as before the First of May, &c. The Arbitrators before their Time expir'd choose an Umpire, and afterwards themselves made an Award. It was objected, that by choosing an Umpire they had determin'd their Power, and put all into the Power of the Umpire. Justice Twisden inclined that the Award was good, and cited the Case of Bernard and King, Stiles 306. said to be so adjudged. It was answer'd,

Same Day given to Arbitrators and Umpire.

Arbitrators
discharged.

Ad vel ante
19 Feb. to Ar-
bitrators, &
ad vel ante
20 Feb. to the
Umpire.

Defendant to
pay an Attor-
ney's Bill.

Release.

swer'd, In that Case the Arbitrators and Umpire were both elected by the Parties; but here the Umpire is elected by the Arbitrators, whereby they had discharged themselves of all their Authority: And only Two Justices being in Court, it was adjourn'd. 1 Lev. 174.

The like Submission, so that the Arbitrators *ad vel ante* 19 Feb. the Umpire *ad vel ante* 20 Feb. The Defendant pleads no Award made. The Plaintiff agrees; but that 19 Feb. the Arbitrators elected an Umpire, who made an Umpirage, and thereupon assigns a Breach. The Defendant demurred, and argued that the Umpirage was void, being made before the Power of the Arbitrators was determined. But it was said on the other Side, that their Power was determined by their electing the Umpire; otherwise where the Umpire is appointed by the Party submitting, and he makes his Umpirage before the Time limited for the Arbitrators to expire. But yet *Twisden* and *Moreton* strongly inclined that the Umpirage was void, and the Power of the Arbitrators not absolutely determined by the Election of an Umpire, they having not absolutely refused to make any Award. *Rainsford* seemed to be of a contrary Opinion; and it was adjourn'd. 1 Lev. 302.

That one should pay on Condition, Releases to be given to each other, and that the Defendant should pay an Attorney's Bill; and assigns a Breach that he deliver'd him the Bill, amounting to 40s. and he had not paid it, good, 3 Lev. 18. for the Money upon the Bill was certain by the Delivery of the Bill.

If the Release be to be made upon performance of that which is well awarded, 'tis good. 3 Lev. 413.

Award

sur Arbitrement.

77

Award to pay in or at the House of a Stranger, good. *Idem* 153. Place of Payment.

Note, By a Statute of 9 & 10 W. 3. c. 15. By 9 & 10 W. 3. the submission may be made a Rule of Court.
After the 11th of May 1698. all Merchants and Traders, and others, desiring to end any Controversie, Suit, or Quarrel, (for which there is no other Remedy but by personal

Action or Suit in Equity) by Arbitration may agree, that their Submission of the Suit to the Award or Umpirage of any Person or Persons, should be made a Rule of any of his Majesty's Courts of Record which the Parties shall choose, and may insert such their Agreement in their Submission, or the Condition of the Bond or Promise. And upon producing an *Affidavit* of such Inserting, and upon reading and filing such *Affidavit* in the Court so chose, the same may be entred of Record in such Court; and a Rule of Court shall thereupon be made that the Parties shall submit to, and finally be concluded by such Arbitration or Umpirage: And *Affidavit.*

in case of Disobedience thereto, the Party neglecting or refusing shall be subject to all the Penalties of contemning a Rule of Court, and Process shall issue accordingly, which shall not be stopp'd or delay'd, unless it appear on Oath that the Arbitrators or Umpire misbehaved themselves, and that such Award was corruptly or unduly procured: In which Case such Arbitration or Umpirage shall be void, and Penalties for Contempt.

set aside by any Court of Law or Equity, so as such Corruption or undue Practice be complained of in the Court where the Rule is made for such Arbitration, before the last Day of the next Term after such Arbitration made and published to the Parties. Corrupt Award, &c. void.

Q. If the Clause may not be to the Purpose following at the End of the Condition? *viz.*

And the above-bound *A. B.* doth agree, and desire, That this his Submission to the Award above mentioned be made a Rule of Her Majesty's Court of *Queen's Bench*, pursuant to the late Act of Parliament for this Purpose provided.

And so the like for the other Party in the Condition of his Bond of Submission.

For a general View of all Matters relating to this Head of Arbitrament: See the late General Abridgment of the Common Law, printed 1705. viz.

1. *O*F what Things it may be. *Ibid.*
fo. 513.
2. Where the Submission is with a Condition to perform; it in what Cases the Condition is broke, if it be not perform'd. *Idem*
514, &c.
3. Of what Things they make an Award. *Idem*
518.
4. What Things shall be said to be submitted. *Idem*
519.
5. What shall be a good Award, where the Award is to do a Thing out of the Submission to a Stranger, or by a Stranger. *Idem*
520.
6. What Things may be awarded to be done, and of Things impossible, unreasonable, and against the Law. *Idem*
522, &c.
7. How it may be made. *Idem*
524, &c.
8. How it is to be made. *Idem*
527.

9. Of

9. Of an Award of one Part only. *Id.* § 29.
10. When the Submission is general without an *Ita qd'*, &c. *de premissis.* *Id.* § 33.
11. What shall be an Award of all. *Id.* § 34.
12. In what Cases an Award shall be void in Part, or in the whole. *Idem* § 36.
13. When the Submission is *Ita qd' fiat de premissis.* *Id.* § 39.
14. Of Umpirage. *Id.* § 40.
15. In what Cases the Award shall be void for Uncertainty. *Id.* § 43.
16. In what Actions it shall be a good Bar, *Id.* § 45, &c.
17. What Award shall be a good Bar of Actions, &c. *Id.* § 47.
18. What Persons shall be bound by their Submission. *Id.* § 49.
19. Who shall take Advantage of an Award, *Ibid.*
20. Of a Declaration upon an Award. *Ibid.*
21. Of Plea, Replication, and Breach, *Id.* § 56, (*al.* § 50,) &c.
22. Of the Performance thereof. *Id.* § 76, (*al.* § 52.)

Attachment sur Arbitrement.

NOte, That when the Court refers the Cause by Rule to the Arbitrement of *J. S.* though it be void, yet the Court will force the Parties to submit to it, till it be avoided by Plea, 1 *Keb. fo.* 130. 13 *Car.* 2. But see the late Act.

Upon a Rule to give Bond to submit to an Award, no Attachment lieth, 1 *Keb. pag.* 138.

Attachment
denied.

When the Rule of Court is for doing a particular Act, an Attachment lieth; but contrary, where 'tis generally to submit to an Award; and therefore upon a Motion for an Attachment upon Breach of a Rule of Court to submit to an Award, it was denied, 1 *Keb.* 128.

Where the
Parties sub-
mit to a Rule.

In 1 *Keb.* pag. 634. it is set down for a Rule, That when the Parties by Rule of Court submit to Award, he that will have an Attachment must by *Affidavit* suggest Breach; and then the Defendant may come in and plead, that they made no Award, or shew Cause why an Attachment should not be awarded, and so the Matter may come in Debate. But no Attachment may be awarded on general Suggestion of Breach without Notice.

If the Party
will not sub-
mit accord-
ing to his
Consent.

An Attachment was moved against the Defendant for Non-performance of an Award submitted to by the Rule of the Court made by Consent, as is used in the Common Pleas, which the Court refused, because hereby all Awards would be affirm'd as good, how void soever. But if the Party will not submit according to his Consent, the Court will grant an Attachment. 2 *Keb.* pag. 42.

Where not
against a Cor-
poration.

Li. 2. pag. 1. An Attachment cannot be granted against a Corporation upon a Reference by Rule: But otherwise, if the Rule were between *A. B.* and *C.* who comprise the Corporation.

Upon a Rule
of Assize
made a Rule
of Court.

An Attachment was pray'd for not performing an Award made by the Lord Chief Baron, by Rule of Assize made a Rule of Court; which *Keeling* Chief Justice denied, unless made by the Court, and said, The Attachment might be for not submitting, but not when an Award is made: But the Court held the contrary, yet an Attachment was denied, 2 *Keb.* p. 645.

Vide

Vide Siderf. 452. pl. 19. But see 2 *Keb.* p. 585. where 'twas granted for not obeying an Award made by Rule of Affize, after made a Rule of Court.

Holloway pray'd to set aside an Attachment and Rule of Court on an Award made unreasonably. But it was not allowed for the Award good or bad, being on Reference agreed by Council, whereby the Cause is put off. Attachment as well for Non-performance, as for not submitting.

On *Westm.* 1. cap. there ought to be a Rule for Performance, for Abuse to the Court, and Consent to the Party. And *per Curiam*, the Common Pleas are now satisfied to grant these Attachments; and that not only for not submitting to the Award, as was resolv'd by all the Judges at Oxford, in the Case of Lord Howard Earl-Marshal, but also for Non-performance; and so it was granted, 3 *Keb.* p. 104, 105.

Pollexfen pray'd Stop of an Attachment against the Defendant, for not performing an Award on Reference at Affizes. But it was not allowed; for the Trial being thereby put off, the Party would be deluded if no Attachment should be granted thereon. And albeit the Matter was for Butter and Cheese sold by the Copartner for 21 l. and above 45 l. given to one Copartner by the Arbitrator unheard; yet *per Curiam*, either no Submission ought to be, or not to be elusory. Submission not to be elusory. But on bringing Reference on in the Money, a Reference was ordered, 3 *Keb.* p. 585. But see the late Act. Reference on bringing in the Money.

*Bar in Debt sur Obl' Vic' & al
Officiar', &c.*

Nar', Against ff.
one upon
Two Sheriffs
Bonds given
by Joint-Ob-
ligors.

How the De-
fendant ought
to plead or
demur.

THE Defendant after Oyer demurs to the Declaration upon Two Sheriffs Bonds; and it was thereupon argued for him, that the Declaration was ill, because the Plaintiff had declared against the Defendant only, whereas it appear'd upon the Oyer that they were Joint-Bonds, and that Two others were jointly bound in the same Bonds, and so the Declaration against one alone ought to abate.

But it was answer'd by the Plaintiff's Council, That the Declaration was good enough; for although that Two others are named in the Bonds, yet it does not appear that they put their Seals to it; and if the Bonds were not sealed by them, then the Bonds were single notwithstanding the Two other Persons being named. But if in Truth the other Two Persons had sealed the Bonds as well as the Defendant, then the Defendant, if he would have taken Advantage of it, ought not to have demurred upon the Oyer, but he ought to have pleaded in Abatement, That the other Two Persons sealed the said Bonds, and that they were yet alive, and so pray'd Judgment of the Bill, as appears by 28 Hen. 6. 3. & Cro. Eliz. 494, & 544. *Ascue* and *Hollinsworth's* Case; and the whole Court was of the same Opinion, and Judgment was given for the Plaintiff, *Nisi*, &c. But afterwards it was stay'd upon
Pre-

Pretence of an undue Prosecution by an Attorney that was concern'd in the Bonds, they being Sheriffs Bonds for Appearance. *Vide* 1 Saund. 289, &c.

Vic' Com' vers' Subvic' sur Obl' pur performer Covenants.

§. ' **D**Ebt sur Obl' per Vic' vers' Subvic' Bar pur performer Condition' pur performer Covenants in Indentur', Def' placitat' le Indenture & performance specially. Repl', Protest', &c. pro placito. Qd' Ca' sa', deliberat' fuit' Subvic' vers' T. de 1511. exequend' virtute cujus Def' cepit T. in executione & extra custod' ejus ad largum ire premisit per quod Quer' coactus fuit solvere debitum, Sic Def' non indempn' conservavit, Quer' de escapio.

' Rejo', Qd' Quer' non fec' Def' aliquod speciale Warrant' pro executione predict' brevis, Demurr' inde, Et judic' pro Quer'. *Win. Ent. 193. Vide Hob. Rep. fo. 12.*

§. ' Simile placitum, per Conditions perform'. Repl' protest', &c. Pro placito Fi' sa' de 1711. deliberat' fuit Def' exequend' virtute cujus Def' fieri fec' 1201. partem deberi quas non solvisset Cur' nec satisfacisset T. per quod Quer' in Com' Banco implacitat' fuisset, &c. Demurr', *Idem Winch. Ent. 229. Vide ante.*

§. ' *Vide* 1 Lut. 582, &c. Debt per Exec' vers' Def' come Exec' nuper Vic' pro Argent' solut' al Vic' sur un' Ca' sa', prosecute &

Vers' Exec' nuper Vic'.

‘ deliver al Vic’, &c. Bar per non detinet,
 ‘ Et Issue sur ceo, Special Verdict’ & Judic’
 ‘ pro Def’.

Vers’ Vic’
 pro denar’
 levat’.

ff. ‘ Al Debt vers’ vic’ pro denar’ levat’ su-
 ‘ per Liberate in Cancellar’, Bar al parcell’
 ‘ Debiti, nil debet per Priam, al resid’ Def’
 ‘ placitat’ special’ Acquietanc’, *Winch Ent.* 306.
 ‘ *Hob. Rep.* 206.

*As to Bars in Actions on the Case by and
 against Sheriffs, &c.*

ff. ‘ **Q**D’ Def’ habuer’ licenc’ ad elargiand’
 ‘ Prisonar’, *Rob. Ent.* 301.

Vide 3 Lev. Rep. 44. Defendant pleads *Re-*
cuss’ in bringing the Prisoner to Gaol, and a
 good Plea although the *Rescous* not return’d.
Vide 1 Lut. 129, 130, &c.

ff. ‘ *Marshall* pleads fresh Pursuit, &c. *2 Mod.*
Intr. 145.

ff. Sheriff pleads he took Bail according to
 the Statute 23 H. 6.

‘ *2 Mod. Intr.* 151, 188, 190. Simile *Bro.*
 ‘ *Rediviv.* 96. Et Repl’ qd’ Manucaptor non
 ‘ habuer’ sufficien’ in Com’, &c.

ff. ‘ Non cepit & arrestavit, &c. *3 Inst.*
 ‘ *Cl.* 354.

ff. A *Habeas Corpus* and Discharge by the
 Justices at the Sessions. *Idem* 335.

ff. ‘ Non devastavit bona juxta retorn’,
 ‘ *Idem* 376. Brevia non deliberat’ fuer’, &c. *Ib.*

ff. ‘ Non premisit ire ad largum, *Cl. Assist.* 83.
 ‘ Qd’ Def’ puis Escape comperuit, &c. *1 Lut.*
 ‘ 71, 73. See it after.

§. ' Qd' ceper' ballium pro comparencia,
' Rob. Ent. 309.

§. ' Al Count per Attorn' pro Feodis, Nil
' debet per Pria'm. Bro. Red. 176.

§. Attorney in Case pleads Reteyner. Rob.
Ent. 38, 99. 3 Inst. Cl. 372.

§. Attorney excuses his Default for Want of
Instructions. Rob. Ent. 18, 20, &c.

§. ' Bar per comperuit ad diem. Vide
' ante. Et Vide Bro. Red. 203. Pl. Gen. 366,
' 367, &c. 1 Mod. Int. 186. Hansf. 115. Rob.
' Ent. 203. Clerks Man. 402. 1 Instr. Cl. 213,
' 337, &c.

§. ' Nil debet per Pria'm. 3 Co. 68.
Vide Lev. Ent. 58. A special Verdict, but no
Judgment.

*Defendant pleads the Statute of 23 Hen. 6.
to a Bail-Bond.*

§. ' **E**T modo ad hunc diem, (&c.) Et
' idem R. defend' vim & injur' quan- Oyer del
' do, &c. Et pet' auditum scripti Obl' pre- Obl', &c.
' dict', Et ei legitur, &c. Pet' etiam auditum
' conditio ejusdem scripti Obl', Et ei legitur
' in hec verba, §. Conditio istius Obligationis
' talis est, (&c.) Quibus lectis & auditis idem
' R. F. dic qd' ipse de debito predict' virtute
' script' Obl' predict' onerari non debet quia
' dic qd' ante confection' script' Obl' predict'
' scilt' per quendam Act' fact' in Parlamento Bar per Stat'
' Domini Henrici nuper Regis Angl', &c. 23 H. 6.
' sexti tent' apud Westm' in Com' Midd' 25
' die Febr' Anno Regni secundi 23. recitan'
' in eodem Actu qd' Dominus Rex conside-
' rand' magn' perjur' extortion' & oppression'

que tunc preantea fuer' in regno Angl' per
 suos Vic' Subvic' & eorum Clericos Co-
 ronatores Seneschal' Franch' Ballivos & Cu-
 stod' Prisonar' & al' Officiar' in diversis Com'
 istius regni, int' al' Inactitat' fuit Authoritate
 ejusdem Parl' in evitation' omnium tal' extor-
 tion' perjur' & oppression', Qd' nullus Vic'
 ad Firmam traderet in aliquo modo Com'
 suum nec aliqua Ballivar' suarum Hundred'
 nec Wapentac' nec qd' predict' Vic' Subvic'
 Ballivi Franch' nec aliquis al' Ballivus retor-
 narent super aliquod breve sive precept' eis
 direct' retornand' aliquas Inquisition' in aliquo
 pannello superinde fiend' aliquos Ballivos Of-
 ficiar' sive servos aliquibus Officiar' predict'
 in aliquo pannello per ipsos sic fiend' nec qd'
 aliquis predict' Officiar' & Ministrorum oc-
 casione vel sub colore eorum Officii caperet
 aliquam aliam rem per ipsos nec per aliquam
 al' personam ad eorum usum proficuum vel
 emolument' de aliqua persona per ipsos vel
 aliquos eorum arrestand' vel attachiand' nec
 de aliquo alio eorundem pro omissione alicu-
 jus arrestationis sive Attachiamet fiend' per
 eorum corpus vel de aliqua persona per ipsos
 vel aliquos eorum vigore aut colore eorum
 Officii arrestat' sive attachiat' pro fine feod'
 fact' prisone manucaption' ad ballium tradi-
 tion' vel demonstration' (Anglice *shewing*)
 alicujus easiamet' sive favoris alicui tali per-
 sone sic arrestat' sive arrestand' pro ejus sive
 eorum premio sive proficuo nisi tal' qual'
 sequuntur videlt' pro Vic' 20 d. pro Ballivo
 qui fac' arrestation' vel Attachiamet' quatuor
 denar' & pro custod' Prisone (Anglice, *of the*
Gaoler) si prisonar' sit commiss' custod' sue
 quatuor denar', Et qd' Vic' Subvic' Cleric'
 Vic'

Vic' Seneschal' aut Ballivus Franch' serviens
 aut Ballivus aut Coronator' non caperent ali-
 quam rem sub colore Officii sui per se nec
 per aliquam al' person' ad usum suum de ali-
 qua persona pro confectiōe alicujus retorn'
 sive panell' & pro copia alicujus panelli
 nisi quatuor denar'; Et qd' predict' Vic' &
 omnes al' Officiar' & Ministr' predict' tra-
 derent extra prisonam o'iod' person' per ip-
 sos aut aliquem eorum arrestand' vel existen'
 in eorum custod' virtute alicujus brevis Bille
 sive Warranti in aliqua Actione personal' aut
 per causam Indictament de transgr' super
 r'onabiles fide jussores sufficien' person' haben'
 sufficien' infra Com' ubi tal' person' sic forent
 tradit' ad Ballium sive manucaption' ad cu-
 stod' eorum dies in talibus locis qual' predict'
 brevia Bill' sive Warrant' requirerent' (tal'
 person' sive personis que fuer' sive forent in
 eorum custod' pro condemnation' execu-
 tion' Capias utlegat' vel excommunication' se-
 curitat' de Pace & omnibus tal' person' que
 fuer' sive forent commis' ad custodiam per
 special' mandat' alicujus Justic' & vagabund'
 recusan' servire secund' formam Statut' de
 Laboratoribus tantummodo Except'.) Et qd'
 nullus Vic' nec aliquis Officiar' vel Ministr'
 predict' caperent vel capi causarent vel face-
 rent aliquam Obligation' pro aliqua causa
 supradict' vel colore eorum Offic' sed solum-
 modo sibi metipsis de aliqua persona nec per
 aliquam person' que essent in eorum custod'
 per cursum Legis nisi per noen' eorum Officii,
 Et super Condition' script', qd' qd' Prisonar'
 comparerent ad diem content' in dictis
 Brevibus sive Warrant', Ac in talibus locis
 qual' predict' Brevia Bill' sive Warrant' re-
 qui-

Bill Midd'
sued out to
the Sheriff to
take R. K. res'
die Veneris,
&c.

quirarent, Et si aliquis predict' Vic' vel al'
Officiar' vel Ministr' predict' caperent ali-
quam Obligationem in al' forma colore Of-
fic' suorum qd' vacua foret prout in eodem
Actu (int' alia) plenius liquet & apparet,
Et idem R. ulterius dic' qd' post edition'
predict' Act' Parl' pred' ac pred' tempore
confection' scripti Obl' predict' scilt' predict'
6 die Febr' Anno Regni Domini Car' secun-
di nunc Regis Angl', &c. 16, & diu antea
predict' J. B. fuit Ballivus Libertatis Decani &
Capitali Ecclesie Collegiat' beati Petri Westm,
predict' debit' elect' & constitut', Qdque
ante confection' script' Obl' predict' scilt'
Termino sancti Hill' Annis Regni Domini
Car' secundi nunc Regis Angl', &c. 16 &
17. quidam W. B. nul' & J. B. prosecut'
fuer' extra Cur' dicti Domini Regis coram
ipso Rege quoddam precept' ipsius Domini
Regis (vocat' a *Bill of Middlesex*) per quod
precept' fuit G. W. & C. D. adtunc Vic'
Com' Midd' qd' caperent predict' R. K.
si, &c. Et eum salvo, &c. ita qd' haberet
corpus ejus coram Dom' Rege apud Westm'
die Veneris prox' post Octob' pur beate
Marie ad respond' eisdem W. & J. de placito
transgr' Aceciam Bille ipsorum W. & J. vers'
prefat' R. K. pro 90 l. de Debito secund' m
cons' Cur' ipsius Domini Regis coram ipso
Rege exhibend', Quod quidem precept' po-
stea & ante retorn' precept' ill' scilt' primo
die Febr' Anno Regni Domini Car' secundi
nunc Regis Angl', &c. 17. deliberat' fuit
prefat' G. W. & C. D. adtunc Vic' Com'
Midd' predict' apud paroch' sancti Clemen-
tis Dacorum infra Libertat' predict' in forma
juris Exequend' virtute cujus quidem pre-
cepis

' cept' idem Vic' Midd' per Warrant' suum in
 ' scriptis sigillo suo sigillat' Ballivo Libertatis **Sheriffs War-**
 ' Decan' & Capitali Ecclesie Collegiat' beati **rant to Bailiff**
 ' Petri Westm' predict' in Balliva sua direct' **of the Li-**
 ' mandavit' eidem Ballivo qd' caperet predict' **berty.**
 ' R. K. si, &c. Et eum salvo, &c: ita qd' ha-
 ' beret corpus ejus coram dicto Domino Rege
 ' apud W. predict' die Veneris prox' post
 ' Octab' pur beate Marie ad respond' prefat'
 ' W. B. & B. B. de placito trans', Acetiam
 ' bill' ipsorum W. & J. vers' ipsum K. pro
 ' 90 l. de Debito secund' Cons' Cur' ipsius
 ' Domini Regis coram ipso Rege exhibend'
 ' virtute cujus quidem Warranti eidem Ballivo
 ' Libertatis predict' direct' postea scilt' predict'
 ' 6 die Febr' Anno Decimo septimo supradicto
 ' idem J. B. adunc Ballivus Libertat' predict'
 ' existen' ipsum R. K. apud paroch' sancti Cle-
 ' mentis Dacorum in Com' predict' ac in-
 ' fra Libertat' predict' cepit & arrestavit &
 ' ipsum R. K. in custodia sua adunc & ib'm
 ' habuit & detinuit, Et idem R. F. ulterius **R. K. arrest-**
 ' dic' qd' predict' R. K. sic in Prisonsa sub cu- **ed, &c.**
 ' stod' predict' J. B. Ballivi Libertatis predict'
 ' virtute Warr' ill' existen' idem R. F. simul-
 ' cum prefat' R. K. & quodam T. J. postea
 ' scilt' predict' tempore confection' script' Obl'
 ' predict' per scriptum obl' ill' sigillis suis si-
 ' gillat' & eidem J. B. ut eorum factum de-
 ' liberat' conjunctim & divisim devener' tent'
 ' & obligat' eidem J. B. in predict' ducent' **Defendant**
 ' Libr' sub Conditione predict' pro easiamen' **bound for**
 ' & favore eidem R. K. de imprisonament' **Favour, &c.**
 ' suo predict' per predict' J. B. demonstrand'
 ' & pro deliberatione sua abinde habend' &
 ' obtinend' quod quidem script' Obl' idem J. B.
 ' colore Officii sui predict' de eodem R. F. &
 ' de

Bar in Debt

de predict' R. K. & T. J. cepit contra for-
mam Statut' predict', Et sic idem R. F. dic'
qd' script' Obl' predict' hic in Cur' prolat'
in forma predict' & ex causa predict' ut pre-
fertur capt' & fact' vigore Statut' predict'
vacuum in Lege existit, Et hoc idem R. F.
parat' est verificare, Unde pet' judic' si ipse
idem R. F. de debito predict' virtute script'
Obl' predict' onerari debeat, &c.

Repl' per
Bill' Midd' &
Warr' retorn'
die Sab'ti
prox' post,
&c.

ET predict' J. B. dic' qd' ipse precludi
non, quia dic' qd' ante predict' tempus
confection' script' Obl' predict' scilt' Ter-
mino sancti Hill' Annis Regni Domini Caroli
secundi nunc Regis Angl', &c. 16 & 17. pre-
dict' W. B. & J. B. prosecut' fuer' extra Cur'
dicti Domini Regis coram ipso Rege (eadem
Cur' apud Westm' in Com' Midd' tunc exi-
sten' quoddam precept' ipsius Domini Re-
gis, vocat' *a Bill of Middlesex*, per quod pre-
cept' fuit G. W. & C. D. ad tunc Vic' Com'
Midd' qd' caperent predict' R. K. si, &c.
Et eum salvo, &c. ita qd' haberet corpus
ejus coram Domino Rege apud Westm' die
Sabbati prox' post Octab', Pur beate Marie
ad respondend' eisdem W. & J. de placito
trans' Aceciam bill' ipsorum W. & J. vers'
ipsum R. K. pro 90 l. de debito secund'm
cons' Cur' ipsius Domini Regis coram ipso
Rege exhibend', Quod quidem precept' po-
stea & ante retorn' precept' ill' scilt' primo
die Febr' Anno Regni Domini Car' secundi
nunc Regis Angl', &c. 17. deliberat' fuit pre-
dict' G. W. & C. D. vic' Midd' predict'
apud Westm' predict' in Com' predict' in
forma juris exequend' virtute cujus quidem
precept' idem Vic' M. ante retorn' inde scilt'
secundo die Febr' Anno 17. supradicto apud
W.

W. predict' in predict' Com' M. per Warrant' suum in scriptis sub sigillo suo Officii sui Vic' Com' M. predict' Ballivo Libertatis Decani & Capitali Ecclesie Collegiat' beati Petri W. predict' in Balliva sua direct' mandavit eidem Ballivo qd' caperet predict' R. K. si, &c. Et eum salvo, &c. ita qd' haberet corpus ejus coram Dom' Rege apud Westm' predict' die Sabbati prox' post Octab' Pur' beate Marie ad respond' pefat' W. B. & J. B. de placito trans' Aceciam bill' ipsorum W. & J. vers' ipsum R. K. pro 90 l. de debito secund' cons' Cur' ipsius Domini Regis coram ipso Rege exhibend', Quod quidem Warrant' postea & ante retorn' inde scilt' predict' secundo die Febr' Anno 17. supradicto apud W. predict' in Com' M. predict' deliberat' fuit pefat' J. B. adtunc Ballivo Libertat' predict' existen' in forma juris exequend' virtute cujus quidem Warranti eidem Ballivo Libertatis predict' direct' idem J. B. adtunc Ballivus Libertat' predict' existen' postea scilt' predict' 6 die Febr' Anno 17. supradicto apud W. predict' in Com' predict' ac infra Libertat' predict' ipsum R. K. cepit & arrestavit & ipsum R. K. in custod' sua adtunc & ibid' habuit & detinuit, Qd'q; pred' R. K. tempore confection' script' Obl' predict' in narr' predict' superius menc' & per predict' J. B. hic in Cur' prolat', fuit in Prilona sub custod' predict' J. B. adtunc Ballivi Libertat' predict' virtute Warrant' ill' ult' menc' & non virtute Warr' predict' in placito predict' R. F. superius spec', Et hoc idem R. B. parat' est verificare, Unde pet' judicium & debitum suum predict' unacum Dampnis suis occasione detention' debito ill' sibi adjudicari, &c.

Et

Rejo' main-
tain Bill
Midd' &
Warr', Et
traverse War'
in Repl'.

Quer' demur'
al Traverse.

Argument
pro Quer'.

ET predict' R. F. ut prius dic' qd' pre-
dict' R. K. tempore confection' script'
Obl' predict' hic in Cur' prolat' fuit in prifona
sub coltod' predict' J. B. virtute Warrant'
predict' in placito predict' R. F. fuperius
menc' prout ipfe idem R. fuperius alle-
gavit, Abfque hoc qd' predict' R. K. pre-
dict' tempore confection' fcript' Obl' predict'
fuit in prifona fub coltod' predict' J. B. vir-
tute Warr' predict' in Repl' predict' J. B.
fuperius mentionat' prout ipfe idem J. B.
fuperius replicando allegavit, Et hoc parat'
eft verificare, Unde ut prius pet' judic', Et
qd' predict' J. B. ab Actione fua predict' inde
verfus eum habend' precludatur, &c. Quer'
moratur in Lege, (Et Def' jung' in morac'.)
Et pro Causis moration' in Lege, Eo qd'
placitum predict' eft duplex & caret forma
& eft incertum & materia in eodem content'
eft multiplex & incertum, Et eo qd' predict'
R. cepit Traverfiam fuper Traverfiam & tra-
verfat materiam non traversabil', Et non bene
concludit placitum per ipfum rejungendo
placitat', &c. Vide i Saund. 15, 16, &c.

Upon the Argument of this Demurter, it
was faid for the Plaintiff by Serjeant Wild,
That the Defendant's Rejoinder was ill, be-
cause he had taken a Traverse after a Traverse,
for the Plaintiff had replied that K. was in Cu-
stody by Vertue of the Warrant returnable
Die Sabbati prox' post Octab' pur', which was
right according to the Condition of the Bond,
& non virtute Warranti retornabil' die Veneris
prox' post Octab' pur', as the Defendant had plead-
ed; and this was a Traverse upon which the
Defendant ought to have taken Issue, and not

to have traversed over as here he has done ; and he put many Cases where there shall be no Traverse, after a Traverse taken before by the other Party, as 27 H. 8. fo. 2. b. and Digby and Fitzherbert's Case, Hob. 103. And here he said, That the Plaintiff in his Replication had traversed the Warrant returnable *die Veneris*, and therefore the Defendant in his Rejoinder cannot traverse the Warrant returnable *die Sabbati*.

The Defendant's Council argued, That the Rejoinder was good ; and first he denied that the Plaintiff had made any Traverse in his Replication ; for the Plaintiff only says, that the said K. was in Prison by Vertue of the Warrant returnable *die Sabbati*, & non virtute Warranti returnabil' *die Veneris*, which was no Traverse, but a flat Negative ; and the Plaintiff had relied upon his affirmative Matter before, and had not travers'd at all, and that the proper Words of a Traverse are *Absque hoc*, which are not in the Plaintiff's Replication, and so he had taken no Traverse : But the Court took not much Notice of this. Then he argued, That the Traverse in the Defendant's Rejoinder was good, notwithstanding that the Plaintiff had taken a Traverse in his Replication : And he agreed to the Rule, that a Traverse ought not to be taken after a Traverse ; but he took a Difference to be where the first Traverse is good, and taken to a material Point, and comes to the Substance, then there shall be no other Traverse taken after ; but where the first is idle, and not well taken, nor pertinent to the Matter, but of that which was sufficiently confess'd and avoided before, there the Party may take another Traverse after such an immaterial Traverse taken before ; and relied

Mr. Saunders's Argument pro Def.

Jeofail.

If aided per
Stat' Jeofails.

lied upon the said Case of *Digby and Fitzbert*. Then here the Defendant had pleaded, that *K. fuit in prisona retornabil' die Veneris*, and so the Condition of the Bond not being according to the Return of the Warrant, was void: Whereupon the Plaintiff in his Replication has shewn that he was in Prison *virtute Warranti retorn' die Sabbati*, which was according to the Condition of the Bond; and then the Plaintiff had fully confessed and avoided the Defendant's Plea, for if *K.* was in Prison by Ver- tue of the Warant alledged by the Defendant, yet if he was also in Prison by Force of the Warrant alledged by the Plaintiff, the Bond was good, and not void, and so it was not material for the Plaintiff to traverse the War- rant alledged by the Defendant, which the Plaintiff had sufficiently confess'd and avoided before. And he further said, That if an Issue should be join'd upon the Plaintiff's Traverse, it would be a Jeofail at Common Law; for suppose it be found that *K.* was in Prison *vir- tute Warranti retorn' die Veneris*, yet at Com- mon Law the Court could not proceed to Judgment for the Defendant, because it does not appear but that he might be in Prison *vir- tute Warranti retorn' die Sabbati*, for that it is so pleaded, and not denied by the other Party, and so the Bond is good. And though perad- venture it may be aided at this Day by the Statute of *Jeofails*, yet the Defendant is not constrained to take such Issue, no more than he was at the Common Law. And moreover he said, That the Issue should be taken upon the most material Point, and cited *Helliar's Case*, 6 Co. 24. b. But the most material Point here, was the Warrant returnable *die Sabbati* which was the rightful Warrant; for upon an
Issue

Issue join'd thereon, a Verdict found the one
 Day or the other upon such Issue determines the
 Matter; for if it be found that the said K. was
 Prison by Force thereof, the Bond is good;
 and if it be found that K. was not in Prison by
 Force thereof, then the Bond is void; and he
 so put the Cases, 41 E. 3. Repl' 59. Dyer 171.
 pro. Car. 384. Trespass for breaking the Plaintiff's
 Close: Defendant says, *Qd' est son Franktenement*.
 If the Plaintiff entitle himself to a Term for
 Years, he shall not traverse the Defendant's
 Freehold, because he has sufficiently avoided
 it; and the Plea and the Replication may well
 stand alike, because both of them may be
 true, and so he concluded the Rejoinder good.
 And for these Reasons Justice *Twisden* and *Wind-*
ham, in the Absence of Justice *Moreton*, were of
 the same Opinion: But Chief Justice *Keeling*
 was of Opinion that the Rejoinder was ill,
 because he took it that there were was only
 one Warrant; but the Parties differ'd in the
 Return thereof, and then the Plaintiff alledg-
 ing it to be returnable another Day than the
 Defendant had pleaded, he did well to traverse
 the Return which the Defendant had alledged
 before, upon which Traverse the Defendant
 ought to have taken Issue, and not to have
 traversed over. And afterward, in the same
 Term, the Matter was argued again (*Pemberton*
pro Quer', & *Jones pro Def'*) to the same In-
 tent as before; and Justice *Twisden*, *Windham*,
 and *Moreton*, in the Absence of Chief Justice
Keeling, did severally deliver their Opinions
 for the Defendant, that the Rejoinder was
 good. But at the Instance of the Plaintiff's
 Council, the Court gave him Liberty to dis-
 continue his Action upon Payment of Costs,
 although it was after they had deliver'd their
 Judg-

How the Is-
 sue ought
 to be.

Example in
 Trespass as
 to the Tra-
 verse.

Cur' cum Def'

But a Dis-
 continuance
 allowed.

Judgment. *Vide 1 Saund. 20, 23.* Where the Reporter adds, that he thought the Plaintiff would have objected against the Manner of the Traverse, *Absque hoc qd' K. fuit in Prisonsa virtute Warranti*, that the *Virtute* ought not to be traversed, but that was not moved. That it is good, see *Hob. 52. Foster and Jackson's Case 9 H. 6. 14 & 20.*

J. ' Similis Bar' sine Traverse, Repl' qd' J. fuit arrest' virtute Latitat' retorn' die Mart' prox' post tres Trin', Rejo' qd' J. fuit arrest' per Lat' ret' die Lune prox' post tres Trin', Surrejo' & Issue sans Traverse, que doit estre. Vidian Ent. 200.

The same Statute pleaded more briefly.

Bar.

J. ' Q' Uibus lectis & auditis idem T. dic' qd' predict' R. action' non, Qui dic' qd' ad Parliamentum Domini Henrici nuper Regis Angl' sexti post Conquestum tent' apud Westm' 25 die Febr' Anno Regni sui 23 int' alia inactitat' fuit autoritate ejusdem Parl', Qd' Vic' Subvic' Clerici Vic' Seneschalli vel Ballivi de Libertat' Servien' vel Ballivi nec Coronator' caperent colore Officii sui per ipsos aut per aliquam personam ad eorum usum de aliqua persona pro retorn' vel panell' faciend' aliquam rem & pro copia de pannello nisi quatuor denar', Et qd' predict' Vic' & omnes al' Officiar' & Ministri predict' dimitterent extra prisonam omnes & omnimod' personas per ipsos aut per aliquem eorum arrestat' vel existen' in sua custodia virtute alicujus brevis bille sive warranti alicujus Actionis personal' aut per causam Indictamenti de trans' ad rationabile' seq

securitatem de sufficien' personis haben' sufficien' infra Com' ubi tales persone essent dimiss' ad securitat' vel per manucaptor' ad custodiend' suos dies & in talibus locis ubi predict' Bille Brevia vel Warrant' requirerent (tal' person' vel personis qui essent aut qui adunc fuissent in sua custodia per condemnation' Execution' Capias Utlagat' sive * excommunicat', securitat' de pace & omnibus talibus personis que essent aut fuissent commiss' per special' mandat' alicujus Justiciar' & Vagabund' recusant' servire juxta formam Statut' de Laboratoribus tantummodo except') Et qd' nullus Vic' nec aliquis Officiar' sive Ministri sui predict' caperent aut capi causarent aliquam Obligationem pro aliqua causa prerecitat' vel colore Officii sui nisi tantummodo sibi metipsis de aliqua persona nec per aliquam personam que esset in sua custodia per cursum Legis nisi per nomen Officii sui sub Conditione fieri qd' predict' persone comparerent ad diem in dictis Brevibus Billis vel Warrantis & in talibus locis ubi predict', Brevia Bille sive Warrantia requirerent, Et si aliqui predict' Vic' vel Officiar' aut Ministri predict' facerent seu caperent aliquam Obligationem in aliqua al' forma colore Officii sui qd' Obligatio ill' esset vacua prout per eundem Actum int' al' plenius liquet & apparet, Et idem T. ulterius dic' qd' post confection' predict' Act' Parl' & ante confection' scripti Obl' predict' scilicet decimo die Junii Anno Regni Domini Caroli secundi nunc Regis Angl', &c. 20. Predict' J. B. prosecut' fuit extra Cur' dicti Domini Regis coram ipso Rege apud Westm' (eadem Cur' apud Westm' in Com' Midd' tunc existen') Quoddam Breve ipsius Domini Regis vocat'

* Though not bailable by the Sheriff, yet he may be bailed in B. R. 1 Bul. 122. per tot' Cur' preter Williams.

a Latitat, tunc Vic' Com', Eborum dire^{ct}
 per quod quidem Breve idem Dominus Rex
 eidem Vic' E. precepit qd' caparet W. M.
 Gen' si invent' foret in Balliva sua, & eum
 salvo custod' ita qd' haberet corpus ejus coram
 dicto Domino Rege apud Westm' die Sab.
 bati prox' post quinden' sancti Martini ad
 respond' J. B. Gen' de placito trans' ac etiam
 Bill' ipsius J. B. vers' prefat' W. pro 60 l.
 de debito ac etiam vers' ipsum W. pro 32 l. 2 s.
 plur' secund' cons' Cur' dicti Domini Regis
 coram ipso Rege exhibend'; Et qd' haberet
 ibi breve illud, Quod quidem Breve postea
 & ante retorn' inde scilt' ultimo die Sept'
 Anno 20. supradict', Apud Castrum E. in
 Com' predict' deliberat' fuit prefat' R. M.
 adtunc Vic' predict' Com' E. existen' in for.
 ma juris exequend' virtute, cujus quidem Bre
 vis predict' R. postea & ante retorn' Brevis
 ill' scilt' eodem tertio die Octobr' Anno 20.
 supradicto apud Castrum E. predict' in
 Com' predict' (eodem R. adtunc & adhuc
 Vic' Com' E. predict' existen') predictum
 W. cepit & arrestavit & in Prisonsa eum ad
 tunc & ibid' detinuit quousque predict' W.
 & idem T. ut ejus securitat' cum quodam
 J. A. scriptum Obl' predict' superius menc
 eidem R. sigillaver' & ut factum suum deli
 beraver', Et idem T. ulterius dic' qd' pre
 dict' R. scriptum Obl' cum Conditione pre
 dict' subscript' de eodem W. M. & de pre
 fat' T. & J. ut suis securitat' colore Offici
 sui Vic' Com' ill' adtunc & ibid' cepit con
 tra form' Statuti predict'. Et sic idem T.
 dic' qd' script' Obl' predict' cum Conditione
 adinde superius recitat' in forma & ex cau
 predict' ut prefertur fact' & capt' vacuum i
 Lege existit, Et hoc idem T. parat' est vo
 rificare

rificare, Unde pet' judic' si ipse de debito
predict' virtute script' Obl' predict' onerari
debeat, &c. Quer' moratur in Lege, Et Def' Demur'.
jung' in morac'. Vide 2 Saund. 74, 75, &c.

Manlewerer vers' Hamxby.

Upon the Argument, the Exception taken
by the Defendant was to the Condition of the
Bond, which says, That if *M.* appear *die Sab-*
bati prox' post Octab' sancti Martini, &c. then
the Condition of this Obligation shall be void;
whereas it ought to be, Then this Obligation
shall be void, &c. For it was said for the De-
fendant, That now if *M.* had appear'd at the
Return of the Writ, yet the Bond would be in
Force against the Defendant; for it is said the
Condition shall be void, and then the Obliga-
tion would be single, and such single Bond is
altogether void by the Statute, which appoints
that such Bond shall be upon Condition for the
Appearance of the Prisoner at the Day con-
tained in the Writ: But here is no Condition
of the Bond, but only a Condition of the same
Condition, which says that the Condition shall
be void, but does not say that the same Bond
shall be void; and so there are no Words at
all to make the Bond void, whereby if *M.*
had appeared, or not appeared, the Bond is
single, and without Condition, and therefore
the Bond is against the Statute, wherefore Judg-
ment was pray'd for the Defendant.

Exception by
the Defen-
dant, that it
was a Condi-
tion of the
same Condi-
tion.

But it was answer'd and resolv'd by the Court,
That here the Bond was well enough for the
Words [*Then the Condition, &c.*] for the Absur-
dity and Repugnancy of them shall be void,
and no Regard had to them, no more than if
they had been omitted, and the Sense shall be

Where Ab-
surdity and
Repugnancy
shall be void.

Useless and
insensible
Words.

Judgment
because of
an insensible
Condition.

taken as if it had been, Then this Obligation shall be void; and if the Clause had been omitted, yet the Bond and Condition would be good enough, for after the Bond comes the Condition in this Manner, viz. The Condition of this Obligation is such, that if the said *M.* appear, &c. and then by these Words alone it appears that the Bond was taken for the Appearance of *M.* which is all the Statute requires, although this Clause, (*scilicet*), Then the Obligation shall be void, had been wholly omitted. And now the Addition of useless and impertinent Words shall not hurt the Bond and Condition, which were perfect before, wherefore Judgment was given for the Plaintiff. *Vide* 1 *Saund.* 79 & 80. Where 'tis also noted, that the Defendant's Attorney had subtilly in his Plea averred, That the said *M.* was arrested by a Writ returnable at another Day than was contained in the Condition of the Bond; but it being only a Trick, he durst not as he said, take any Advantage of it. And it is also noted, That the same Judgment was given upon the like Proceedings upon the said Bond, int' *Manleverer & Atkinson, & Manleverer & Markinfield*, in the same Term, *Le R.* in *Mich.* 21 *Car.* 2. *Rot.* 299, 300. See *Brown Rediviv.* 222, &c. Where the Condition runs, If the above-bounden *Robert Wilson* do appear in the King's Bench, die *Mercur' prox' post quinden' Pasch'*, to answer *William Briscoe*, then the present Obligation to be void, and of no Effect, or else to stand in full Power, Force and Vertue, with Effect in Law. The Defendant pleaded the said Statute, and the Plaintiff demurred, and Judgment is said to be given for the Defendant, *Eo qd' Conditio Obligationis fact' Vic' pro comparenc' Def' est mala insensibilis & caret forma.*

Def' placitat' qd' ipse ut Manucaptor non
habuit sufficien', nec fuit Commorans in-
fra Com' per quod script' fuit vacuum per
Stat. 23 H. 6.

Quibus lectis & auditis idem J. W. dic'
qd' ipse de Debito predict' virtute
script' ill' onerari non debet quia dic' qd' per
quendam Actum in Parliament' Domini H.
nuper Regis Anglie sexti apud W. predict'
in Com' Midd' An' Regni sui 23. tent' edit'
int' al' Inactitat' fuit auctoritat' ejusdem Parl',
Qd' nullus Vic Subvic' Clericus Vic' vel Subvic'
Seneschal' vel Ballivus Franches' servien' vel
Ballivus nec Coronator caperent aliquam rem
colore Officii sui per se nec per aliquam aliam
personam ad ejus vel eorum usum de aliqua
persona pro factura alicujus retorn' vel pan-
nell' & pro copia pannell' nisi quatuor denar',
Et qd' predict' Vic' & omnes al' Officiar' &
Ministri predict' dimitterent extra prisonam
omnes & omnimod' personas per ipsos aut
per aliquem eorum arrestat' vel existen' in
sua custodia virtute alicujus Brevis Bille sive
Warrant' in aliqua Actione personal' aut ra-
tione alicujus Indictament' de trans' super
rationabil' securitat' sufficien' personarum
haben' sufficien' infra Com' ubi tales per-
sone essent sic dimiss' ad ballium sive manu-
captionem ad custodiend' suos dies in talibus
Locis qual' predict' Bill' Brevia vel Warrant'
requirerent (talibus person' & personis que
forent vel adtunc fuissent in sua custod' per
condempnation' execution' Cap' ult' sive ex-
communicat', securitat' pacis & omnibus ta-
libus personis que forent vel fuissent commiss'

Defendant as
Bail in Bar,
would take
Advantage of
his own In-
sufficiency.

Defendant as
Bail in Bar
would take
Advantage
his own
offence

‘ gardo per special’ mandat’ alicujus Justic’ &
‘ Vagabund’ renuen’ servire secund’ formam
‘ Statuti de Laboratoribus tantummodo except’
‘ Et qd’ nullus Vic’ nec aliqui Officiar’ vel Mi-
‘ nistri predict’ caperent vel facerent capi vel
‘ fieri aliquam Obligation’ pro aliqua Causa
‘ prererat’ vel colore Officii sui nisi tantum
‘ modo sibi meritis de aliqua persona nec per
‘ aliquam personam que foret in sua custod’
‘ per form’ vel Ordinem Legis nisi sub nomine
‘ Officii sui & sub Conditione qd’ predict’ per-
‘ sone comparerent ad diem content’ in dictis
‘ Brevibus Bill’ vel Warrant’ & in tal’ locis
‘ qual’ predict’ Brevia Bille aut Warrant’ re-
‘ quirerent, Et si aliqui predict’ Vic’ vel al’
‘ Officiar’ vel Ministri predict’ caperent vel
‘ facerent capi aliquam Obligationem in aliquo
‘ al’ forma colore Offic’ suorum qd’ Obligatione
‘ ill’ foret vacua, prout per eund’ Actum in
‘ al’ plenius apparet, Et idem J. ulterius dic’
‘ qd’ post edition’ Act’ predict’ & ante con-
‘ fection’ script’ predict’ scilicet 14 die Junii
‘ Anno Regni dicte Domine Regine nunc 24
‘ supradicto predict’ A. P. prosecut’ fuit extra
‘ Cur’ dicte Domine Regine coram ipsa Re-
‘ gina apud W. predict’ tunc existen’ quoddam
‘ Breve ipsius Domine Regine de Latitat’ su-
‘ nomine ipsius A. vers’ quendam E. A. tunc
‘ Vic’ predict’ Com’ C. direct’ ac coram Do-
‘ mina Regina apud Westm’ predict’ predict’
‘ die Lune prox’ post predict’ Octab’ sancti
‘ Mich’ retornabil’ ad respond’ prefat’ A. o-
‘ placito transgr’, quod quidem Breve in form’
‘ predict’ prosecut’ predict’ A. postea sci-
‘ 20 die A. Anno Regni dicte Domine Re-
‘ gine 24. supradicto apud W. predict’ de-
‘ beravit prefat’ J. C. tunc Vic’ predict’ Cor-
‘ C. in forma Juris exequend’. Cujus quidem
‘ Bre

' Brevi pretextu predict' J. C. predict' 20 die
 ' A. Anno Regni dicte Domine Regine nunc 24.
 ' supradicto apud W. predict' tunc Vic' pred'
 ' Com' C. existen' predict' E. A. cepit & ar-
 ' restavit ipsumque E. in custod' dicte Domine
 ' Regine sub custod' ejusdem Vic' ad tunc &
 ' ibid' virtute Brevis predict' habuit & cu-
 ' stodivit ipsumque E. sic in prison' pre-
 ' dict' sub custodia ejusdem Vic' in forma
 ' predict' existen' idem J. W. ad requisition'
 ' predict' E. ut un' Manucaptor' ipsius E. A.
 ' pro inlargiamento & ad largum position'
 ' ejusdem E. extra prisonam predict' deven' Ob-
 ' ligat' p'fat' C. in predict' 20 l. per predict'
 ' script' Obl' hic in Cur' prolat' cum predict'
 ' Condition' eidem script' Obl' in forma pre-
 ' dict' subscript' colore Officii sui Vic' predict'
 ' Com' C. Et idem J. W. ulterius dic' qd'
 ' idem J. W. predict' tempore confectio' script'
 ' predict' non habuit sufficien' infra predict'
 ' Com' C. nec habitabat nec fuit commorans
 ' infra Com' predict' per quod scriptum pre-
 ' dict' vers' ipsum J. W. vacuum in Lege exi-
 ' stit, Et hoc parat' est verificare, Unde ex
 ' quo predict' script' fact' per predict' J. W.
 ' ut un' Manucaptor' ipsius E. ex causa pre-
 ' dict' eodem J. W. pred' tempore confectio'
 ' script' ill' non haben' sufficien' infra predict'
 ' Com' C. per' judic' si ipse de debito predict'
 ' virtute script' predict' contra form' Statut'
 ' predict' fact' onerari debeat, &c. Quer'
 ' moratur in Lege, Et Def' jung' in morat',
 ' Vide *Thomps. Ent.* 211, 212, &c.
 ' H 4 Al

*Al Obl' ove Condition' pro comparenc', Def'
placitat' qd' script' Obl' fuit fact' ad diem
post retorn' brevis, Et travers' qd' Obl'
deliberat' fuit ante talem diem.*

Bar that the
Bond was
made after
the Return of
the Writ.

¶ **Q**uibus lectis & auditis idem W. P. dic'
qd' predict' C. Action' non, Quia
dic' qd' in Parliament' Domini Henrici nuper
Regis Angl' sexti post Conquestum tent' apud
W. 15 die Feb. Anno Regni sui 23. int' al'
Inactitat' fuit qd' Vic' Subvic', (&c.) Et si
aliqui predict' Vic' vel Officiar' vel Ministr'
predict' caperent aliquam Obl' in alia forma
per color' Offic' suorum qd' esset vacua pro-
ut per eundem Actum int' al' plenius liquet
& apparet, Et idem W. P. ulterius dic' qd'
post confectio' predict' Act' Parl' & ante
confectio' predict' script' Obl' predict', pre-
dictus E. P. (suetb forth a Latitat, &c. ret'
Mercurii prox' post tres Trin'.) Et idem
W. P. ulterius dic' qd' predict' G. A. virtute
Brevis predict' ac virtute cujusdam Warranti
per predict' W. C. superinde fact' predict'
13 die J. Anno 17. supradicto capt' & arre-
stat fuit, Ipsoque G. sic arrestat virtute Bre-
vis ac Warrant' predict', ac existen' in cu-
stod' predict' W. C. ad tunc Vic' Com' pre-
dict' apud A. predict' in custod' sua detent'
fuit a predict' 13 die J. usque & super diem
Lune 19 die tunc instan' J. Ac predict' W. P.
ulterius dic' qd' dies Mercurii prox' post
tres Septimanas sancte Trin' Anno 17. supra-
dicto in Conditione prerecitat' menc', fuit
14 dies J. Anno 17. supradicto, Ac qd' post
14 diem J. scilt' 19 die J. ipse idem W. P.
pro deliberatione predict' G. A. ab Arrest'

ill'

ill' ac pro inlargiament' corporis ipsius G. a
custod' ipsius W. C. & pro redemption'
Libertatis sue script' Obl' predict' unacum
presat' G. A. ut ejus securitat' (Anglice,
Surety) ad usum presat' W. C. Vic' predict'
Com' D. adtunc existen' apud A. predict' ut
factum suum primo deliberavit, Absque hoc
qd' ipse predict' W. P. predict' 14 die J. An-
no 17^{mo} supradicto vel aliquo al' die ante 19
diem J. supradict' script' Obl' predict' fecit
sigillavit & ut factum suum eidem W. C. de-
liberavit, Et sic idem W. P. dic' qd' predict'
W. G. adtunc Vic' Com' D. ut presertur
existen' scriptum Obl' predict' colore Officii
sui adtunc & ibid' cepit contra formam Sta-
tut' predict', Per quod script' Obl' predict'
vacuum & nullius effect' in Lege deven' &
existit, Et hoc parat' est verificare, Unde
pet' judic' si predict' W. C. Action' suam
predict' inde vers' eum habere seu manute-
nere debeat, &c. *Vide Thomps. Ent. 219,*
&c.

ff. 'A. Obl' cum Conditione per solution'
401. Bar' per eund' Statut', Et qd' Def'
fuit arrest' sur' Ca' sa' extra Canc', Et quer'
existen' Subvic' cep' Obl' pro inlargiament.
to, &c. Quer' Demur'. *Vide Winch. Ent.*
333.

Sur Ca' sa'
extra Canc'.

Similis

Similis Bar sur Attachment e Canc' & Demurr' inde secund'. 2 Vent. Rep. 235, &c.

Bar sur Attachment e Cur' Canc'.

QUibus lectis & auditis idem T. dict' qd' predict' W. Action' non, Quia dict' qd' per quendam Act' fact' in Parliam' ment' Domini Hen. nuper Regis Angl', &c. sexti tent' apud W. in Com' Midd' 25 die Febr' Anno Regni sui 23. recitan' in eodem Actu qd' dictus Rex consideran' magnam perjur', (&c.) prout in eodem Actu int' al' plenius liquet & apparet, Et idem T. ulterius dict' qd' post edition' Act' predict' apud pred' tempore confection' script' predict' scilicet predict' 21 die Apr' Anno 2. supradicto & diu antea predict' W. L. fuit Vic' predict' Com' C. ad Offic' ill' debite elect' & prefect' qd'q; ante confection' script' Obl' predict' scilicet 18 die Febr' Anno Regni Regis & Regine nunc secundo supradicto quoddam Breve eorundem Regis & Regine de Attachment de Contemptu e Cur' Canc' ipsorum Regis & Regine apud W. in Com' Midd' tunc existen' Vic' predict' Com' Cumbr' direct' emanavit vers' eund' T. Per quod quidem Breve precept' fuit eidem Vic' qd' attach' eund' T. ita qd' haberet eum coram eisdem Domino Rege & Domina Regina in Canc' sua predict' in quindena Pas' tunc prox' sequen' ubicunque Cur' ill' tunc tent' foret in Angl' ad respond' dict' Domino Regi & Domine Regine tam de quodam contempt' per prefat' T. eisdem Regi & Regine illat' quam de his que sibi tunc & ibidem objicientur, Et ad fac' ulterius & rec' quod dicta Cur' consideraret

deraret in ea parte, quod quidem breve po-
 stea & antea retorn' ejusdem scilicet primo die
 Apr' Anno Regni Regis & Regine nunc se-
 cundo supradicto apud C. predict' in Com'
 predict' deliberat' fuit eidem W. L. adtunc
 Vic' ejusdem Com' in forma juris exequen'
 virtute cujus quidem brevis idem Vic' postea &
 ante Confection' script' predict' scilicet eodem
 21 die Apr' Anno secundo supradicto apud
 C. pred' eund' T. per corpus suum attachiavit
 ac ipsum in custod' sua ibid' habuit & detinuit
 quousque ipse idem T. ac quidam R. L. de
 Civit' C. in eodem Com' Gen' postea scilicet
 eodem 21 die Apr' Anno secundo supradicto
 apud C. predict' per scriptum Obl' predict'
 sigillis suis signat' & eidem W. ut factum
 suum deliberat' conjunctim & divisim deve-
 ner' tent' & Obligat' eidem W. in predict'
 40 l. sub Conditione predict' pro easiamento
 & favore eidem T. de imprisonament' suo
 predict' per predict' W. demonstrand' &
 pro deliberatione sua ab Imprisonament' ill'
 habend' & obtinend' quod quidem script'
 Obl' idem W. colore Officii sui predict' de
 eodem T. & pefat' R. contra formam Sta-
 tut' predict' cepit, Et sic idem R. dicit qd'
 script' Obl' illud' in forma predict' & ex
 causa predict' fact' vigore Statut' vacuum in
 Lege existit, Et hoc idem R. parat' est veri-
 ficare unde per' judic' si predict' W. Action'
 suam pred' vers' eum habere debeat, &c. Quer' Demurr'.
 moratur in Lege, Et Def' jung' in morac'.

First, That the Statute saith, That where
 the Party is in Custody by Vertue of any
 Writ, &c. in any Action, or upon any Indict-
 ment of Trespals, and an Attachment for Con-
 tempt out of Chancery, is not within the
 Words

Obj. That an
 Attachment
 is out of the
 Statute.

Words of the Statute, in the 3 Cro. *Johns & Stratford* 309. taken by a Serjeant at Mace upon Process out of the Grand Sessions, held not within the Statute in the 3 Leon. 280.

Secondly, The Condition is to appear *Coram Rege in Cancellar' apud Westm'* instead of *ubique*, as the Writ is; for this, *Vide Styl.* 234. *Burton & Law, & Mo.* 430. *Corbet & Downing.*

R. That it is not.

As to the Word *Ubi-
cunque.*

As to the First, the Court inclined that the Attachments out of Chancery were within the Statute, 'tis the constant Practice for Sheriff's to take Bail in such Cases. *Vide Styl.* 234. *Roll's Opinion* according. As to the second Point, 'Tis true that such Bonds have been judged void; but of later Times the Court have not been so strict upon the Wording of such Bonds, and a Case was cited to have been in *B. R. Trin.* 22 Car. 2. *Rot.* 914. where the Condition of a Sheriff's Bond was to appear *Coram Justiciariis nostris de Banco*, and not said *Apud Westm'*, and yet held good. But the Court gave Leave to speak further to the Case at Bar. *Vide 2 Ventr.* 237, 238.

*Upon a Sheriff's Bond to pay Fees upon
an Extent.*

ss. ' **A**L Obl' Subvic' pro solutione denar'
' Bar per eund' Statut' 23 H. 6.
' Repl' qd' Breve de Extent' sur Stat' stapul'
' emanavit extra Cur' Canc' direct' Vic' L.
' Et Quer' existen' Subvic' agreeat' fuit ante de-
' beration' brevis de Liberate int' Quer' &
' Def' qd' Def' solveret Quer' 32 l. pro exe-
' cutione Brevis predict' Et pro solutione inde
' Def' fec' scriptum, Et ulterius placitat Sta-
' tut' de 29 Eliz. pur Execution Fees, Def'
' demurr'

demurr', Et pro Causis, Eo qd' predict' F. Demur' &
 non respond' ad barram predict' G. Et scrip. Judic' pro
 tum predict' per propriam demonstration' Def'.
 predict' F. vacuum in Lege existit, Judic'
 pro Def'. *Vide Winch. Ent. 334, 337. Latch.*
Rep. fo. 20. Where it was adjudged; 1. That
 the Bond was void, for that the Statute 28 H. 8.
 gives him an Action on the Case for his Fee,
 and he ought not to have a double Reward.
 2. The Bond is void, for that it was taken be-
 fore the *Liberate* sued, and so the Sheriff took
 his Fee before he did his Work. *Vide Winch.*
Rep. fo. 19 & 50.

Upon a Condition to be a true Prisoner.

¶ **D**Ebt sur Obl' ove Condition fore ve-
 rum Prisonar', Bar qd' Obl' fuit
 capt' colore Officii contra Statut' ubi Def'
 fuit capt' per Liberate super Stat' Stapul',
 Demurrer inde. *Plo. 61.*

Debt sur Obl' fait Marr' Maresc' desire voier
Prisonar', Bar per eund' Stat' 23 H. 6.
Qd' un' P. fuit in executione in custod',
Quer' ads' R. Et Def' pro easiamento & fa-
vore demonstrand' P. deven' tent', &c.

Simile upon a
Bond to the
Marshal,

¶ **E**T modo ad hunc diem, (&c.) Et per' au- Bar after
 dit' scripti Obl' pred', Et ei legitur, &c. Oyer.
 Pet' etiam auditam Condition' ejusdem script'
 Obl', Et ei legitur in hec verba. ¶ The
 Condition of this Obligation is such, That if
 the above-bounden *Algernoon Payton*, now Pri-
 soner in the *King's Bench Prison* in *Southwark*,
 do and shall from henceforth be and continue a
 true Prisoner in the Custody, Guard, and safe
 Keeping, of the above named *John Lenthall*,
 Knight.

Knight-Marshal of the same Prison, and in
 the Custody, Guard, and Safe-keeping, of his
 Deputy Officers and Servants, or some or
 one of them, until he shall be lawfully dis-
 charged, without committing any Manner of
 Escape or Escapes during the Time of his
 Restraints: Then this present Obligation to
 be void, and of none Effect, or else to be
 and remain in full Power, Force, and Vertue.
 Quibus lectis & auditis idem J. C. dic' qd'
 ipse de debito predict' virtute script' Obl'
 predict' onerari non debet quia dic' qd' ante
 confection' script' Obl' predict' scilt' per quen-
 dam Actum fact' in Parliament' Domini Hen.
 nuper Regis Angl' sexti tenet' apud Westm' in
 Com' Middl' 25 die Febr' Anno Regni sui 23.
 recitan' in eodem Actu, Qd' dictus Rex con-
 siderans maximum perjurium extortion' & op-
 pression' que tunc preantea fuer' in Reg' Angl',
 &c. (*reciting the Act.*) Prout per eund' Actum
 plenus liquet & apparet, Et predict' J. C. ulte-
 rius dict' qd' ad tempus confectionis script'
 Obl' predict' scilt' predict' 13 die Julii Anno
 Regni Domini Car' secundi nunc Regis Angl',
 &c. 16. & diu antea ipse pred' K. fuit Marr'
 Maresc' D'ni Regis, Qd'q; pred' A. P. eodem
 tempore confection' script' Obl' pred' apud S.
 in Com' Surr' fuit prisonar' sub custod' pre-
 fat' J. L. ad tunc & adhuc Marr' Maresc'
 predict' existen' in executione predict' ad se-
 ctam cujusdam E. R. pro debito 400 l. & 80 s.
 pro dampnis per prefat' E. vers' eund' A. in
 Cur' dicti Domini Regis de Banco apud W.
 in Com' Middl' tunc antea recuperat, Qd'q;
 ipse predict' J. C. cum prefat' A. P. pro
 easiamto & favore prefat' A. de impriso-
 nament' suo predict' demonstrand' eodem
 13 die Julii Anno Regni dicti Domini Regis
 nunc

nunc 16. apud paroch' predict' in Com'
predict' predictum script' Obl' in narr' pre-
dict' mentionat' cum Conditione predict'
prefat' J. L. adtunc & ibid' Marr' Marefc'
dicti Domini Regis predict' sigillavit & ut
factum suum deliberavit, Et predict' J. L.
idem script' colore Officii predict' de prefat'
A. & J. C. pro Causa predict' adtunc &
ibid' cepit & acceptavit, Et sic idem J. C. dic'
qd' scriptum predict' cum Conditione predict'
sic ut prefertur in forma predict' fact' & pro
Causa predict' virtute Statuti predict' omnino
vacuum & nullius effectus in Lege existit,
Et hoc parat' est verificare, Unde pet' judic'
si ipse predict' J. C. de debito predict' virtute
script' Obl' predict' onerari debeat, &c.

Repl' qd'
Def' fec'
Obl' pro me-
liori securi-
tat' Quer' ne
P. evaderet.

bona & bona
bona & bona
bona & bona
bona & bona

Def' demur'.

' Et predict' J. L. dic' qd' ipse precludi non,
quia dic' qd' predict' J. C. pro meliori secu-
ritat' ipsius J. L. qd' predict' A. P. non eva-
deret extra custod' ipsius J. L. sed remaneret
in salvo custod' ipsius J. L. fecit eidem J. L.
script' Obl' predict' in narr' predict' su-
perius mentionat' modo & forma prout
idem J. L. superius inde vers' eum narravit,
Absque hoc qd' predict' J. C. pro easiamento
& favore prefat' A. de imprisonament' suo
predict' dand' seu demonstrand' predict'
script' Obl' in narr' predict' menc' cum Con-
ditione predict' prefat' J. L. sigillavit & ut
factum suum deliberavit modo & forma pro-
ut idem J. C. superius inde placitando alle-
gavit, Et hoc parat' est verificare, Unde pet'
judic, Et debitum suum predict' unacum
dampnis suis occasione detention' debiti ill'
sibi adjudicari, &c. Et predict' J. C. Def'
moratur in Lege, &c. Et pro causis, Eo qd'
placitum predict' superius replicando placitat'
materiamque in eodem content' repugnans in se

'duplex & incertum est & caret forma. Quer-
'jung' in morat. *Vide 1 Saund. 157, &c.*

Upon this Demurrer it was argued for the Defendant, That the Bond was void by Force of the Statute 23 H. 6. cap. 10. of Sheriff's Bonds, and that this Bond was given *pro Favore & Easimento*. But it was said on the other Side That such a Bond with Condition might be given to a good End; and it did not appear that there was any Agreement for Favour and Ease, but the contrary, for the Plaintiff in his Replication had traversed it, and the Defendant by his Demurrer had confessed his Replication to be true: And the Case of Sir George Reynolds against Elworthy, *Latch 23, & 43.* was cited and chiefly the Case there cited of Sir Thomas Perrier, enter'd in *Hill. 19 Jac. Regis, Rot. 1202* which Roll was produced and read in Court and it appear'd that the Condition was of this Condition, but there was an Issue upon the Easement and Favour, and found for the Plaintiff that the Bond was not for Ease and Favour, and thereupon the Plaintiff there had Judgment: Whereupon Judgment was also pray'd for the Plaintiff here; and although the Court at first doubted, yet upon reading the said Record they gave Judgment immediately for the Plaintiff. *Vide 1 Saund. 163, &c.*

Judgment pro
Quer'.

Upon a Bond
to the War-
den of the
Fleet.

'C'ount sur Obl' & mutuat' per Gardian de
'*Fleet envers Surety del Prisoner.* De
'al mutuat' placitat' Nil debet & al' Ob
'predict' Stat' 23 H. 6.
'Repl' per proviso in eodem Statuto q
'Gardian' de le *Fleet* non dampnificat' fore
'in Officio suo, &c.

J. 'E

ff. Et predict' A. dic' qd' ipse per aliqua Repl'.
 preallegat' ab Actione sua predict' de predict'
 40 Marcis habend' precludi non debet, Quia
 dic' qd' in predict' Statuto in predict' Par-
 liamento predict' nuper Regis Hen. 6. Pro-
 visum existit' qd' Gardianus Gaole dicti Do-
 mini Regis de le Fleet, & Palatii dicti Do-
 mini Regis Westm' pro tempore existen' non
 foret dampnificat' (Anglice, *indamaged*) nec
 prejudicat' (Anglice, *prejudiced*) per Ordina-
 tion' predict' in Officio (Anglice, *the Duty*)
 Officii sui, Et hoc parat' est verificare, Unde
 per' judicium & debitum suum predict' una-
 cum dampnis suis occasione detention' earun-
 dem 40 Marcarum sibi adjudicari, &c. Def'
 demurr' generalement, Et Quer' jung' in mo. Demur'.
 rat', Et quia Justic', &c. Et quoad triand'
 Exit' predict', &c. *Vide Winch. Entr. 191, &c.*

Sur Obl' per Adm' Vic'.

Debt sur Obl' per Adm' de E. P. que Where the
 sur Oyer del Obl' & Condition' ap. Intestate is
 pear d'estre Bail-Bond. Bar per Stat' 23 H. 6. not said nu-
 Et que un' brief fuit sue hors que ne Garrant per Vic'.
 le Obl', &c. Et sur Demurrer le Opinion
 del Court fuit envers le Plaintiff, pur ceo
 que le brief & Count ne mention' que le In-
 testate fuit nuper Vic', &c. *Vide 1 Lutwich*
619, &c.

ff. Debt pur 40 l. per Pl' Vic' London, Bar, Where
 sur Obl' dat 19 Jan. 8 W. 3. Et le Obl' n'est the Bond was
 mention' d'estre fait al' Plaintiff come Vic, not mention-
 le Condition' pur le Appearance de R. C. ed in the De-
 die Veneris prox' post Octab' Hill' ad re- claration to
 spond' J. D. &c. Bar per eund' Stat' 23 H. 6. be made to
 the Plaintiff
 as Sheriff.
 I And

Defendant
pleads a ficti-
ous Writ to
make the
Bond within
Stat.

And that in *Mich. Term. 8 W. 3.* the said J. D. prosecuted an Attachment of Privilege against the said R. C. and others directed to the Sheriff of *London*, returnable *die Sabbati prox' post Octab' Hill.* to answer the said D. in an Action upon the Case, that the Writ was delivered to the Sheriff 19 Jan. 8 W. & C. arrested the said 19 Jan. and detain'd till he made the said Bond, with the said Condition for Ease and Favour; and that the Bond was taken *colore Officii sui*, with an Averment that the first Return in *Hillary Term fuit die Sabbati, &c.*

Averment.

‘ Cum hoc quod idem J. A. verificare vult
‘ qd’ primus dies dicti Terminii sancti Hillarii
‘ in Conditione predict’ mentionat’ pro return’
‘ hujusmodi brevium de Attach’ (& al’ brevium
‘ in Cur’ hic super breve Original’ minime
‘ fundat’) fuit predict’ dies Sabbati prox’ post
‘ Octab’ sancti Hillarii, &c.

Repl’, Prays
the Bond may
be inrolled.

Plaintiff’s
shew the true
Writ.

The Plaintiffs pray that the Bond may be inrolled in *hec Verba*, ‘ Et super hoc predict’ S. B. & J. W. pet’ qd’ script’ Obl’ predict’ hic in Cur’ prolat’, cujus Condicio superius spec’ est, irrotulet’, Et irrotulat’ in *hec verba*, ‘ Noverint Universi per presentes, (&c. By which it appears that the Bond was made to the Plaintiff as Sheriffs,) Dat’ decimo nono die Jan. Anno Regni (&c.) 8. Annoque Domini 1696. Quo sic irrotulat’ iidem S. B. & J. W. dic’ qd’ ipsi per aliqua preallegat’ ab Actione sua predict’ habendo precludi non debent, Quia protestando non cogn’ aliqua de predict’ brevi in predict’ placito predict’ J. superius mentionat’ fore retornabl’ hic die Sabbati prox’ post Octab’ sancti Hill’ predict’ fore vera, pro placito dic’ qd’ predict’ J. D.

‘ *sued*

sued out an Attachment returnable predict' die Veneris prox' post Octab' sancti Hill' tunc prox' sequen', &c. by which they attach'd the said R. C. and took the Bond for his Appearance, ad diem & locum in eodem brevi content' juxta tenorem brevis ill' ac secund' formam & effectum Statut' predict', Et hoc ipsi iidem S. B. & J. W. parat' sunt verificare, Unde pet' judic' & debitum suum predict' unicuique dampnis suis occasione detention' debiti ill' sibi adjudicari, &c. The Defendant rejoin'd, and the Plaintiff surrejoin'd; and the Defendant rebutted, and then the Plaintiff demurred. *Vide 1 Lut. 680, &c.*

Rejoinder,
&c.

In this Case upon the Argument it was agreed, That by the Bar the Declaration was made to be ill, *prima facie*, because it was not alledged that the Bond was made to the Plaintiff *per nomen Vic'*: And then the main Question was, Whether the Plaintiffs by their Replication could amend and make it good by the Entry of the Bond upon Record? And was insisted for the Defendant, that they could not do; for the Declaration, as it was at first, is that which is the Foundation of the Suit, and to which the Defendant is to answer, and upon which the Court is to give their Judgment; and therefore it ought to be perfect at first, and if it be not so, Advantage is given to the Defendant, which he had taken by pleading a good Plea in Bar, which ought not to be avoided by the doing of a Thing which might have been done before, and by that Means to trick the Defendant, who notwithstanding any thing that appears, had another, if this Advantage had not been given to him.

Q. If the Replication made the Declaration good.

Where 'ris
not alledged
that the Heir
was bound.

If Defendant
ought not to
have enter'd
the Bond up-
on Oyer.

That if Debt be brought against an Heir, and in the Declaration it is not alledged that the Heir is bound, can the Plaintiff after a Plea pleaded enter the Bond, and then demur? Certainly not. So the Bond upon which the Plaintiffs have declared is variant from the Bond inroll'd; for the Bond in the Declaration is to be intended of a Bond made to them in their private personal Capacity, and the Law will so intend, and the Bond which is inroll'd is made to them in their Capacity as Sheriffs. If an Action be brought against one by Bill in B. R. if it appears by the Declaration that he is not chargeable but only as Executor, the Bill shall abate; and so it is adjudg'd *1 Saund. 111.* So if an Original in Debt is brought against one, in which he is not named Heir, if the Declaration be against him as Heir, it is ill; and so adjudged per tot' Cur', 30 H. 6. 5. a. Chief Justice Treby was of Opinion, That the Defendant having pray'd Oyer of the Bond, he ought to have enter'd it, and then it had been Part of the Declaration; and that not being done by him, it might be done by the Plaintiffs; and if the Defendant had pleaded *non est factum*, it would be found against him; and it is the Pleading of the Statute which gives Occasion to the Plaintiffs to shew that the Bond was made to them as Sheriffs. And as to the Objection That if Debt be brought against one as Heir, and in the Declaration it is not alledged that he was bound as Heir, that it is ill; the Chief Justice said, That in that Case it appears that the Declaration is ill, but in the Case here not; and that it is impossible to make a bad Declaration against an Heir good by a Replication. That after a long Debate, the Chief

Pro

Prothonotary Cooke produced in Court Ten
Precedents of Writs and Declarations, directly
according to the Writ and Declaration in this
Case, all which Precedents were enter'd in
Micb. 24 Car. 1. Rot. 1154, 1155. and thereupon
Judgment was given for the Plaintiffs by the
Assent of Justice Powell, who before was of
Opinion against the Plaintiffs. *Et Judic' pro*
Quer'.

Vide 1 Lut. 685, &c. Et vide ante, 1 Lut.
619, &c. for the like Case between the Writ
and Count, as in this Case.

ss. Debt upon a Bond *de Noningint' & Octo-* Upon Vari-
gint' Libr', upon Oyer it was for *Nongint' &* ance pleaded.
Octogesima Libris, and then Variance pleaded
between the Count and Obligation. Plaintiff
by Replication prays Oyer of the Condition,
which was for Payment of 490*l.* And there-
upon the Plaintiff demurred, and Judgment for
the Plaintiff. *1 Lut. 423, &c.*

ss. Vide 2 Lut. 1641. Where upon a De- Upon Vari-
murrer in a Action of Debt upon a Bond ance between
brought by a Chief Bailiff of a Liberty, the the Writ and
Defendant prays Oyer of the Original, *Quo* Declaration.
lecto & audito, he pleads in Abatement, be-
cause it appears both by the Writ and Decla-
ration, that this Original was sued out before
the Day of the Date of the Bond. The Plain-
tiff replies, That the Writ upon which he de-
clares, was another Writ, and sets it forth *pro-*
ut per Breve. Rejoinder by Way of Estoppel,
by reason of the aforesaid Oyer. The Plaintiff
demurs.

Upon the Argument it was held by Chief Where the
Justice Trevor, Nevil, and Blencowe, That the Reading the
Replication was good, for the Writ being filed, Writ shall
the Reading of it is the Act and Office of the not prejudice
the Plaintiff.
I 3 Court,

Upon Oyer of
a Deed.

Court, and shall not prejudice the Plaintiff, nor exclude him from shewing the true Writ. And this is not like to the Oyer of a Deed, for there the Reading of it is the Act of the Plaintiff himself, and therefore he shall not be admitted to say, That the Deed so read to the Defendant, is not the Deed upon which he declared. Justice *Tracy* was of another Opinion, as appears by the Report and Cases cited, but notwithstanding Judgment was given for the Plaintiff.

And it is there further observ'd:

Where a Demurrer may be to a Writ.

1. That there may be a Demurrer to a Writ, for any Insufficiency apparent in the Writ after Oyer of it, and Entry on Record as well as for Variance between the Count and the Deed upon which it is founded; and several Cases and Authorities are there cited.

2. That one cannot demand Oyer of a Deed but during the Time that it is in Court, and that is for the whole Term in which it was produced in Court, 5 Co. 74. *Wimarke's Case*. So that 'tis as well in the Power of the Court to give Oyer of a Deed as of a Writ. *Quæritur* (says the Reporter) *le Reason del Difference entre Oyer de Brief & Oyer de Fait.* Vide 2 Lut. 1644.

Debt pur Escape out of Execution.

DEbt against a Bailiff of a Liberty by *H. B.* and *H.* his Wife, Administratrix of *J. S.* during the Minority of *M. S.* and *H. S.* Daughters and residuary Legatees of the said *J. S.* with the Testament annex'd, for the Escape of *R. D.* out of Execution upon a Judg.

Judgment obtain'd by the Plaintiffs. Bar by a Bar. *Habeas Corpus* returnable at *Westminster*, die *Sabbati prox' post Crastinum Pur'*, with the Plaintiff's Cause return'd, and that he was thereupon committed to the *Fleet*, *Que est eadem Escapia*.

Plaintiff replies, *Protestando* that the said Writ was not delivered before the Escape *pro placito*, that a *Habeas Corpus* was sued out, *Ret' Octab' Hill'*: And that after the Return thereof he took the said *D. D.* and brought him to *Westminster* the 6th of *February*, and the same Day by Fraud, &c. the *Habeas Corpus* in the Plea mentioned was prosecuted and delivered to the Defendant, and not before; and that he was committed upon the said last *Habeas Corpus* prout, &c. ' Absq; hoc qd' predict' W. ' virtute predict' Brevis de *Habeas Corpus* in ' predict' placito ipsius W. superius mentionat' ' Corpus prefat' R. extra predict' Prisonam & ' Gaolam dicti Domini Regis Libertatis pre- ' dict' capiebat & a Prisona predict' ulque ' ad Westm' predict' ducebat prout predict' ' W. placitum suum predict' etiam superius ' allegavit, Et hoc, &c. Unde pet' judic' & ' debitum, &c.

' Def' moratur in Lege, Et pro causis osten- ' dit Cur' & dic' qd' *Traversia* predict' est re- ' pugnans & traversat materiam minime tra- ' versabil', &c. Vide 1 *Lut.* 627, 632.

Obj. 1. Upon the Argument, an Exception was taken to the Declaration, because it was not averr'd that the Executors were within the Age of Seventeen Years, but generally *que deius Age*; *Sed non allocatur*, for the Defendant by his Plea had admitted the Authority of the Plaintiff to bring the Action.

2. But the chief Exception was, That the *Virtute cuius, &c.* was traversed by the Plaintiff in his Replication, which, as was alledged, was Matter in *Ley*, and therefore the Traverse ill, and so was the Opinion of the Chief Justice; but the other Three Judges were of a contrary Opinion, and thereupon the Plaintiff had Judgment. *Vide 1 Lut. 632.*

Vide 2 Lut. 893. Debet & detinet. per Escape, Et Judgment per Nil dic' reversed, because that the Action was brought in the Debet & detinet, whereas it ought to have been only in the Detinet, the Recovery in the first Action being as Executor, and in the Detinet only. Vide postea, Bar sur Escape in Debt.

Debt upon Bond by the Marshal of the King's Bench, conditioned for Payment of Money. Defendant pleads the said Statute 23 H. 6. *pro favore, &c.* The Plaintiff replies, That the Bond was made *pro vero & justo debito*, and traverses *qd' capt' fuit colore Officii, &c.* Et Issue sur le Traverse ut sequitur.

Repl'.

ff. 'ET predict' G. R. dic' qd' ipse precludi non, quia dic' qd' predict' R. T. tempore confection' script' Obl' predict' indebitat' fuit prefat' G. in predict' 40 l. in Conditione predict' superius nominat' de vero & justo debito qd'que pro solutione earundem eidem G. fiend' idem R. T. & predict' A. per script' Obl' in Narr' predict' superius spec' bona fide conjunctim & divisim devenit' & obligat' prefat' G. in predict' 80 l. sub Conditione predict' pro solutione predict' 40 l. super' predict' festum diem sancti M. modo & forma in Conditione predict' superius mentionat', Absq; hoc qd' predict'

dict' G. R. colore Officii sui predict', pre- Traverse.
dictum scriptum Obl' de presat' R. T. & A.
cepit modo & forma prout predict' A. supe-
rius placitando allegavit, Et hoc, &c. Un-
de, &c. Et predict' A. S. ut prius dic' qd' Issue.
predict' G. R. colore Officii sui predict',
predict' scriptum Obl' de presat' R. T. & A. S.
cepit modo & forma prout idem A. superius
placitando allegavit, Et de hoc, &c. Ideo, &c.
Vide Robins. Ent. 209, 210.

*Debt upon Bond by a Sheriff's Bailiff,
conditioned for the Payment of Money
at a Day certain.*

THE Defendant pleads the said Statute, Bar, Qd'
and sets forth a *Latitat* against C. D. scriptum non
and J. C. and a Warrant thereon: 'Cujus fuit sub no-
quidem Warranti pretextu idem J. B. postea mine Officii.
& ante retorn' predict' Brevis scilt' tale die
& Anno, &c. supradicto apud L. predict'
corpora predict' C. D. & J. C. cepit & ar-
restavit & ipsos sub custod' sua adtunc &
ibid' sub arrest' predict' habuit & custodivit
super quo idem Def' postea scilt' die & An-
no ult' supradicto apud L. predict' pro in-
largiamento predict' C. D. extra predict' cu-
stod' predict' J. B. (tunc Ballivi predict' J. A.
tunc Vic' predict' Com' C. ut presertur
existen') deven' Obligat' simulcum predict'
C. D. per predict' scriptum 40 l. eidem
quer' cum predict' Conditione eidem scripto
subscript' pro vera solutione predict' 20 l. pre-
dict' 5 die Junii tunc prox' sequen' in predict'
Porta Ecclesie de R. predict' eidem J. B. per
pred' C. & J. seu eorum alterum fiend', quod
quidem script' Obl' adtunc & ibid' capt' fuit
per

per pred' J. B. colore Officii Ballivat contra
 formam & effectum Statuti predict' per quod
 idem scriptum vigore Statuti ill' vacuum
 in Lege existit, Et hoc parat' est verificare,
 Unde ex quo scriptum predict' non fuit sub
 nomine dict' Officii Ballivat' predict' neque
 tali Conditione qual' per Statut' predict' fieri
 debuit, per' judic' si ipse de debito predict'
 virtute script' predict' contra formam Act'
 predict' onerari debeat, &c.

Rep' prove-
 ro & justo
 debito.

Precludi non, &c. quia dic' qd' predict'
 C. D. tempore confection' scripti predict'
 fuit sui juris ad largum qd'q; predict' G
 predict' (tali die) Anno, &c. quinto supra
 dict' apud L. predict' scriptum Obl' ill' hic
 in Cur' prolat' bona fide & pro vero & justo
 debito fecit sigillavit & ut factum suum deli-
 beravit, Absq; hoc qd' predict' scriptum Obl'
 hic in Cur' prolat' capt' fuit per ipsum J. B.
 colore Officii sui predict' contra formam
 Stat' predict' prout predict' Def' superius
 allegavit, Et hoc, &c. Unde, &c.

Rejo' & Issue.

Et predict' Def' ut prius dic' qd' predict'
 script' Obl' hic in Cur' prolat' capt' fuit per
 predict' J. B. colore Officii sui predict' con-
 tra formam Statuti predict' modo & for-
 mam prout idem Def' superius allegavit vi-
 delt' apud L. predict', Et de hoc pon' se
 super priam', &c. Vide Ast. Ent. fo. 266, al'
 234.

Bar sur Obl' de seperalibus Rebus faciend'. Vide
 the Fourth Part, Bar al' Debt sur' Obl', &c.

Bar

Bar sur Escape in Debt.

Qd' cepit Prisonar' in recente Insecutione, &c.

¶ **E**T predict' Def' per J. P. Attorn' Bar by fresh
 suum ven' & defend' vim & in Pursuit.
 jur' quando, &c. Et dic' qd' predict' Quer'
 Actionem suam predict' inde vers' eum
 habere non debet, Quia dic' qd' bene
 & verum est qd' predict' Def' postea &
 ante retorn' Brevis predict' sibi in forma
 predict' direct' scilt' predict' 20 die Apr'
 Anno 7. supradicto, ad tunc Vic' predict'
 Com' L. existen' apud S. in predict' Com'
 L. predict' W. W. cepit & arrestavit & ip-
 sum in Prisons dicti Domini Regis sub cu-
 stod' ipsius tunc Vic' apud Castrum L. in
 predict' Com' L. existen' in executione pro
 predict' 781. resid' debiti dampnorum pre-
 dict' ad tunc & ibid' habuit & detinuit, Ac
 predict' W. W. sic in Prisons dicti Domini
 Regis sub custod' predict' tunc Vic' L. in
 forma predict' existen' usque (talem diem &
 Annum) salvo & secrete custodivit & detinuit,
 quo quidem (tali die & Anno) supradicto
 predict' W. apud Castrum L. contra volun-
 tat' predict' Def' ad tunc Vic' L. extra Pri-
 son' predict' e custod' ipsius Def' tunc Vic' L.
 evasit, super quo predict' Vic' L. ipsum W.
 recenter insecut' fuit & predict' W. postea
 scilt' (tali die & Anno) & ante diem impe-
 trac' Brevis Original' ipsius Quer' apud A. in
 predict' Com' L. iterum recepit & in custod'
 predict' sub custod' ipsius tunc Vic' apud
 Castrum

‘ Castrum L. predict’ in predict’ Com’ L.
 ‘ existen’ in executione pro predict’ 78 l. resid’
 ‘ debiti & dampnorum predict’ iterum habuit
 ‘ & detinuit, Et hoc, &c. Unde, &c. Vide
 ‘ 1 Bro. 159.

*Aliter secundum Thomps. Ent. 142. Et
 qd’ adhuc detinet in Prisons.*

*Simile per
 fresh Pursuit.*

¶ **E**T predict’ J. L. Mil’ in propr’ per-
 ‘ sona sua ven’ & defend’ vim & injur’
 ‘ quando, &c. Et dic’ qd’ predict’ W. Action’
 ‘ non, quia dic’ qd’ post judic’ predict’ in forma
 ‘ predict’ obtent’ & post predict’ Commission’
 ‘ (Anglice, Commitment) predicti P. custod’
 ‘ predict’ J. L. in execution’ pro debito &
 ‘ dampn’ predict’ in forma predict’ & ante
 ‘ evasionem predict’ P. superius fieri supposit’
 ‘ scilt’ 18 die A. Anno supradicto predict’
 ‘ P. in executione pro debito & dampn’ pre-
 ‘ dict’ sub custod’ predict’ J. L. in Prison’
 ‘ Marr’ existen’ in S. in Com’ S. existen’
 ‘ ipse idem P. Prison’ predict’ in S. in pre-
 ‘ dict’ Com’ S. Vi & Armis, &c. fregit &
 ‘ extra Prison’ predict’ contra voluntat’ ip-
 ‘ sius J. L. adtunc & ibid’ evasit & in loca
 ‘ eidem J. L. incognit’ fugit, Et predict’ J. L.
 ‘ ulterius dic’ qd’ ipse predict’ J. L. expedite
 ‘ (Anglice *freshly*) prope & diligent’ (Anglice
 ‘ *diligently and closely*) post evasionem predict’
 ‘ ut prefertur fact’ apud S. predict’ in dicto
 ‘ Com’ Surr’ insequabatur (Anglice *did pursue*)
 ‘ prorecaptione predict’ P. & insecution’ pre-
 ‘ dict’ (Anglice *Pursuit*) abinde continuavit quo-
 ‘ usq; pred’ J. L. postea & ante exhibition’ Bille
 ‘ pred’ quer’ scilt’ 13 die M. Anno supradicto
 ‘ pre-

predict' P. in insecution' predict' apud Westm'
predict' in dicto Com' M. cepit & predict'
P. in Prifona posuit in execution' pro de-
bito & dampn' predict' ad sect' predict' W.
& adhuc ibid' eum detinet & predict' P. in
Prifona predict' existen' sub custod' predict'
J. L. in execution' pro debito & dampn'
predict' abinde hucusque remansit & ad huc
sic remanet, Que quidem evasio predict' P.
extra Prifon' predict' sicut prefertur fact' est
una eademque evasio & non al' neque di-
versa, Unde predict' W. superius vers' ipsum
J. L. inde queritur, Et hoc, &c. Unde, &c.
Vide *Replication, Rejoinder and Issue, Thomp. 437.*
ut sequitur.

¶ Precludi non, quia dic' qd' predict'
Def' voluntarie permisit predict' P. evadere
extra Prifon' predict' prout predict' Quer' su-
perius vers' eum narravit, Absque hoc qd' pre-
dict' Def' recepit predict' P. in recenti in-
secutione & ipsum in Prifona in executione
pro debito & dampn' predict' posuit modo
& forma prout pred' Def' superius placitando
allegavit, Et hoc, &c.
Et predict' Def' ut prius dic' qd' ipse re-
cepit predict' P. in recenti insecutione & ip-
sum in Prifona in executione pro debito &
dampn' predict' posuit modo & forma prout
ipse predict' Def' superius placitando allega-
vit, Et de hoc pon' se super Priam', Et qd'
Quer' similis, &c. Ideo, &c.

Repl' &
Traverse.

Rejo. & Issue.

(Similis Bar ut ante usque,) Et insecu-
tion' (Anglice *Pursuit*) predict' abinde a loco
ad locum & a Comitatu ad Comitatum fecit
& continuavit quousque, (&c. *as before.*)

Repl' Prote-
stando non
Evasit, &c.

Pro placito
qd' volunta-
rie premisit
H. evadere.

Issue.

Precludi non, quia protestando qd' pre-
dict' H. E. non fregit Prisonam predict' nec
extra Prisonam predict' evasit vel ad loca
eidem J. L. incogn' affugit Protestandoque
etiam qd' predict' J. L. non recentem fecit
insecutionem pro recaptione predict' H. E.
prout ipse idem J. L. superius inde placitando
allegavit pro placito idem R. S. dic' ut prius
qd' predict' J. L. predict' H. E. contra vo-
luntat' ipsum R. S. extra custod' suam ad
largum quo voluit ire & evadere libere & vo-
luntarie permisit prout idem R. S. superius
inde vers' eundem J. L. narravit, Absq; hoc
qd' predict' J. L. in insecution' predict' re-
cepit predict' H. E. & ipsum in Prisona
predict' posuit in executione pro debito &
dampn' predict', Ad sect' ipsius R. S. modo
& forma prout predict' J. L. superius inde
placitando allegavit, Et hoc parat' est veri-
ficare, Unde pet' judic' & debitum suum
predict' unacum dampn' suis occasione de-
temon' debiti ill' sibi adjudicari, &c.
Et pred' J. L. ut prius dic' qd' ipse pred'
J. L. in insecutione predict' recepit predict'
H. E. & ipsum in Prisona predict' posuit
in executione pro debito & dampn' predict'
ad sect' predict' R. S. modo & forma prout
ipse idem J. L. superius inde placitando alle-
gavit, Et de hoc pon' se super Priam', Et
predict' R. S. inde similit', &c. Ideo, &c.
Vide *Vidians Ent.* 195. simile idem 198. Et
Vide *Reads Dec.* 204. & *Bro. Vad.* 516. Si-
milis Bar & Demurrer inde *Winch. Ent.* 172.
Vide 3 *Co.* 52, &c. *Rigewait's Case.* (simil)

In Escape.

B A R., That after the Time of the said supposed Escape, H. by Consent of the Plaintiff appear'd at the Day of the Return of the Writ, *Prout per Record' ejusdem Compacencie, &c.*

Bar.

Plaintiff replies, *Per nul tiel Record' Compacencie* of the said H. by which it might appear that he appeared by the Consent of the said Plaintiff. Defendant demurs.

Rep.

And it was insisted for the Defendant, that the Replication was ill, because the Allegation of the Appearance of the Defendant was sufficient, and the Allegation over, *That it was with the Consent, &c.* was immaterial, and that the Plaintiff might have traversed the Record of the Appearance only. But on the other Side it was said that the Bar was ill, as by *Hob. 210. & Latch 149. & 1 Jones 138. & 2 Rolls Rep. 119. Worsley's Case.* But the Parties amended by Consent. *Vide 1 Lut. 71, & 73.*

Amendment by Consent.

Note, That upon an Action on the Case for an Escape of one taken upon a *Cap' Excommunicat'*, against whom a Sentence had been for Money for Non-payment of Tythes, after Verdict *pro Quer' sur non Assumpsit*, it was objected amongst other Things in Arrest of Judgment, That the Action was founded upon Matters meerly spiritual; and therefore the Action did not lie here, but the Remedy ought to be in the Spiritual Court.

Escape on a Cap' Excommunicat'.

But it was answer'd, That the Process was out of the Temporal Court directed to the Temporal Officer, and executed by him, and the

Escape, a Temporal Tort.

Judic' pro
Quer'.

Bankrupt.

Where the
Sheriff took a
Mortgage.

Sci' fac' after
an Escape.

the Escape was a Temporal Tort, and consequently the Damages thereupon were Temporal. And the Plaintiff had Judgment by the Opinion of the whole Court, although it was confessed to be the first Action in such a Case. And the Court relied much upon the Case of the Sheriffs of *Bristol*, wherein it was adjudg'd That an Action on the Case lies for the Escape of a Bankrupt committed to their Custody by the Commissioners. *Vide 1 Lut. 122, 123.*

Note, That where an Under-Sheriff took Mortgage of a Prisoner, taken upon a Ca' for Security of Debt, and thereupon the Prisoner is set at large, the Sheriff was removed and afterwards the Prisoner pays the Money recovered to the first Under-Sheriff, &c. This is said to be an Escape in the First-Sheriff. *Vide 1 Lut. 587, &c.*

Vide 2 Lut. 1264, &c. Where it's said, That if one being taken in Execution by a Ca' voluntarily suffer'd to escape, yet a *Scire Faci* upon the Judgment by an Administrator li against him. *Vide postea.*

Non permisit Def' ire ad largum.

ff. 'ET predict' T. C. dic' Action' no
' quia dic' qd' ipse non permisit p
' dict' T. A. extra prisonam & custod' suas q
' voluit ad largum ire modo & forma pro
' predict' E. A. & T. superius vers' eum na
' raver', Et de hoc pon' se super Priam',
' predict' E. A. & T. similic', Ideo precep
' est Vic', &c. *Vide Pl. Gen. 237. sim*
' *Clerks Assist. 83.*

Alit

se
po
th
wa
ale
e o
g' d
cap
b
ok
a²
Pr
ove
One
Th
er
Th
fa²
Fac
r li
no
t pr
is qu
pre
na
n',
ecep
sim
Alit

ip
 pr
 pr
 na
 E
 ii
 N
 In
 &
 d
 e
 d
 p
 r
 d
 &
 d
 P
 in
 P
 d
 P
 in
 H
 I
 p
 n

liter, *Where Defendant, being Marshal of the Queen's-Bench, pleads, Non permisit Prisonar' ire ad largum; Venire Facias de medietat' Lingue, &c. Et demur al Evidenc', &c.*

DEbt pro Escapio vers' Submarefcal' Bar per non
 super Execution'. Et predict' Def' permisit ire
 per J. D. Attorn' suum ven', &c. Et dic' qd' ad largum.
 ipse non permisit ipsum R. S. extra Prison'
 predict' ad largum evadere modo & forma
 prout predict' G. & J. superius vers' eum
 narraver', Et de hoc pon' se super Priam',
 Et predict' F. & J. similiter, Et super hoc
 iidem G. & J. dic' qd' ipsi sunt de Alienis
 Nat' in partibus Germanie sub Obedienc'
 Imperator', Et pet' qd' una Medietas jure',
 &c. sit de Indigenis & alia inde medietas sit
 de Alienigenis juxta form' Statut' inde nuper
 edit' & provis', Et quia pred' T. G. hoc non
 deducere potuit sed ill' fore verum concedit
 precept' est Vic' Midd' qd' Venire Facias co-
 ram Domina Regina apud Westm' die (&c.)
 duodecim, &c. Quorum una medietas sit de,
 &c. Et al', &c. per quos, &c. Idem dies
 dat' est, &c. De quo die Jur' predict' int'
 Partes predict' de placito predict' ponitur
 inde int' eas in resp' (&c.) Et postquam Jur'
 predict' sic electi triat' & Jur' fuer', pre-
 dict' Quer' ad proband' Exit' predict' int'
 partes predict' junct' fore verum (&c. gave
in Evidence, That the Prisoner did ride from the Evidence
Prison unto the City of Norwich, &c. And the given.
Defendant on his Part said, That J. W. his De-
puty, gave the Prisoner Leave to ride about his
necessary Business with a Keeper. Et post 17
K dies

Demurrer.

' dies usque Prisonam predict' in S. predict'
 ' sub eadem custod' revertibatur & adhuc ibm'
 ' in Prisona ill' reman.) Unacum hoc quod
 ' idem T. G. verificare vult qd' predict' R. S.
 ' per totum tempus predict' non recessit e cu-
 ' stod' predict' T. G. Et sic idem T. G. dic'
 ' qd' manifeste apparet qd' Jur' predict' tenea-
 ' tur invenire qd' idem T. G. non permisit
 ' predict' R. extra Prison' predict' ad largum
 ' evadere modo & forma prout ipse idem T.
 ' superius placitando allegavit, &c. Quer'
 ' moratur in Lege, Et Def' jung' in morac'
 ' Et dictum est Jur' per Cur' qd' Inquir' que
 ' dampna Quer' sustin' si, &c. *Vide i Brown*
 ' Ent. 176.

ff. ' Simile placitum non permisit ire ad lar-
 ' gum, 5 Co. 89. *Frost's Case.*

ff. ' Qd' Prior Vic' permisit Prisonar' eva-
 ' dere, *Dyer 66.*

Bar per Habeas Corpus ad ducend' coram
Justic'.

Bar by an
Habeas Cor-
pus.

ff. ' **M**arescallus placitat qd' per regulam
 ' Cur' Habeas Corpus fuit fact' de
 ' habend' Corpus coram Justic' ad diem, &c.
 ' Et Justic' reman', per quod idem E. eodem
 ' 21 die F. Anno 6. supradicto pefat' J. H.
 ' ad predict' Prisonam Domini Regis in Pa-
 ' roch' sancti G. in S. in Com' S. predict' sub
 ' salvo & secur' conduct' reducebat qui quidem
 ' J. H. a predict' tempore receptionis ejusdem
 ' Brevis usque predict' tempus reman' fuit sub
 ' salvo & secur' conduct' juxta exigenc' ejus-
 ' dem Brevis, &c. in Prisona predict' sub cu-
 ' stod'

‘fled’ ipſius E. ab eodem 21 die F. Anno 6.
 ‘ſupradicto continue hucusque remanſit, Que
 ‘quidem ductio predict’ J. H. a Prifona predict’
 ‘coram prefat’ Juſtic’ uſque Hoſpiciu, vo-
 ‘cat’ *Serjeants-Inn in Fleet-ſtreet*, in predict’
 ‘paroch’ ſancti D. in Occidental’ London
 ‘predict’ ut prefertur, eſt eadem permiſſio ip-
 ‘ſius J. H. ad largum ire, unde predict’ J. E.
 ‘ſe modo Queritur, Et hoc, &c. Unde, &c.

‘Precludi non, Quia ut prius dic’ qd’ pre-
 ‘dict’ E. predict’ 20 die F. Anno 6. ſupra-
 ‘dicto ipſum J. H. ad largum quo voluit libere
 ‘ire permiſit prout idem J. E. ſuperius verſ’
 ‘eum narravit, Abſq; hoc qd’ predict’ E. vir-
 ‘tute Brevis predict’ de Habeas Corpus duxit
 ‘Corpus predict’ J. H. coram prefat’ D. W.
 ‘apud predict’ Hoſpiciu, vocat’ *Serjeants-Inn*,
 ‘predict’ modo & forma prout predict’ E. ſu-
 ‘perius allegavit, Et hoc, (&c.) Unde, (&c.)

Repl’ per
 voluntarie
 Escape.

‘Et predict’ E. ut prius dic’ qd’ ipſe virtute
 ‘predict’ Brevis de Habeas Corpus duxit Cor-
 ‘pus predict’ J. H. coram prefat’ D. W. apud
 ‘predict’ Hoſpiciu, vocat’ *Serjeants-Inn*, pre-
 ‘dict’ modo & forma prout ipſe idem E. ſu-
 ‘perius allegavit, Et de hoc, &c. Ideo, &c.
 ‘Vide 2 *Browns Ent.* 61. Et vide *Herns Ent.* 318.
 ‘Similis Bar, &c.

Rejo’ & Iſſue.

*Bar qd’ Vic’ deliberaver’ Prifonar’ extra
 cuſtod’ virtute Brevis Domini Regis de
 Superſedeas.*

ſ. ‘ET predict’ G. & C. per A. B. Attorn’
 ‘ſuum ven’ & dic’ (Action’ non), Quia
 ‘dic’ qd’ bene & verum eſt qd’ virtute pred’
 ‘Brevis de Teſtat’ Capias ad ſatisfaciend’ in
 ‘Narr’ predict’ ſuperius menc’, predict’ G. &

Bar per Su-
 perſedeas.

' C. tunc Vic' Com' Midd' predict' capie-
 ' bant & arrestabant predict' C. A. & ipsum
 ' in Prisons Domini Regis de *Newgate* sub cu-
 ' stod' predict' G. & C. virtute Brevis ill' ha-
 ' bebant & detinebant sed iidem G. & C. ulte-
 ' rius dic' qd' post predict' caption' & arre-
 ' station' predict' C. in forma predict' fact'
 ' scilt' 14 die N. Anno Regni Domini Regis
 ' nunc 16. apud L. in Paroch', &c. predict'
 ' C. A. predictis E. & C. ad tunc Vic' dict'
 ' Com' M. ut prefertur existen', deliberavit
 ' quoddam Breve dicti Domini Regis de Super-
 ' sedeas sigillo dicti Domini Regis hujus Cur'
 ' sigillat' eidem tunc Vic' M. direct', Cujus
 ' quidem Brevis tenor' sequitur in hec verba.
 ' Carolus, &c. (*setting forth that special Bail was*
 ' *given for the said C. &c.*) Teste R. H. apud
 ' Westm' 23 die Octobr' Anno Regni 16. Hen-
 ' ly. Et predict' G. & C. ulterius dic' qd'
 ' ipsi iidem G. & C. post reception' predict'
 ' Brevis de supersedeas scilt' predict' 14 die
 ' N. Anno Regni dicti Domini Regis nunc 16.
 ' apud L. predict' in Paroch' & Ward' pre-
 ' dict' virtute predict' Brevis de supersed' pre-
 ' dict' C. extra prisonam deliberaver' & ad
 ' largum ire permiser' prout sibi per Breve ill'
 ' precept' fuit prout eis bene licuit. Absque
 ' hoc predict' G. & C. post predict' caption'
 ' & arrestation' predict' C. & ante reception'
 ' predict' Brevis de Supersed' permiser' pre-
 ' dict' C. evadere & ad largum ire quo voluit
 ' prout predict' J. & P. per narr' suam predict'
 ' superius suppon', Et hoc, &c. Unde, &c.
 ' Vide *Thomps. Ent.* 144.

Traverse.

*Sur Escape vers' Marr', Bar' qd' commis-
sus fuit ei in Executione & eum in cu-
stod' sua habuit & adhuc habet, Et tra-
verse qd' permisit Prisonar' ire ad lar-
gum.*

ff. ' **E**T predict' T. per R. B. Attorn' suum Bar per Marr'
' ven' & dic' Action' non, Quia dic'

' qd' bene & verum est qd' predict' G. in
' predict' placito debiti per judic' Cur' Do-
' mine Regine coram ipsa Regina recuperavit
' vers' predict' W. W. predict' 85 l. Qd'q;
' predict' W. W. postea scilt' predict' (tali
' die, &c. Anno 16. supradicto apud Westm'
' predict' commiss' fuit per dict' Cur' dicte
' Domine Regine adtunc & ibid' custod' pre-
' dict' Thome adtunc Marr' Marefc' predict'
' existen' in executione pro debito & dampn'
' predict' per quod idem T. ipsum W. a Barr'
' Cur' Domine Regine hic usque Marefc' Do-
' mine Regine in S. in Com' S. predict' duxit
' ipsamque in custod' sua in executione pro
' debito & dampn' predict' apud S. predict'
' in Prisonsa Marefc' predict' habuit & detinuit
' & adhuc habet & detinet. Absque hoc qd'
' idem T. predict' W. a predict' Prisonsa Marr'
' Marefc' predict' ad largum quo voluit eva-
' dere permisit, modo & forma prout predict'
' G. superius vers' eum Queritur, Et hoc, &c.
' Unde, &c.

Adhuc habet
W. in Cu-
stod.

' Precludi non, quia ut prius dic' qd' idem Repl' & Issue.
' T. predict' W. a predict' Prisonsa Marefc'
' predict' ad largum quo voluit evadere per-
' misit modo & forma, &c. Et de hoc, &c.
' Ideo Ven' inde Jur', &c. Vide Rob. Ent. 225.

Bar per non cepit nec arrestavit.

¶ Quando, &c. Et dic' qd' ipse non cepit nec arrestavit predict' A. modo & forma prout predict' Q. superius vers' eum queritur, Et de hoc pon' super Priam', Et predict' Q. similiter, Ideo, &c. Vide Bro. Vad. 455.

Qd' captio fuit pro alia Causa & Transvers' Caus' in Narr'.

Bar.

¶ Actio' non, quia dic' qd' idem W. 22 die O. Anno 8. supradicto in Cur' Domine Regis stapul' predict' coram ipso J. M. tunc Major' & Constabular' ejusdem stapul' affirmavit vers' predict' N. quandam querelam debiti super demand' 40 l. pro Merchandizis de ipso W. per pefat' N. in Stapula predict' empt' per quod precept' fuit J. W. ad tunc Servien' & Ministr' Cur' predict' Stapul' predict' que sum' per bonos sum' pred' N. qd' esset in Cur' ejusdem Stapule coram ipso J. M. & pefat' Constabulario apud W. 24 die O. tunc prox' sequen' ad respondend' pefat' W. de predict' placito, Ad quem diem in Cur' ejusdem Stapule coram ipso J. M. & pefat' Constabular' ven' predict' W. in propr' person' sua, Et pefat' J. W. ad tunc & ibid' testabatur qd' predict' N. nichil' habuit in Balliva sua ubi potuit sum' nec' fuit invent' in eadem per quod in Cur' ill' ad tunc precept' fuit eidem J. W. qd' caperet eum si, &c. & salvo, &c. ita qd' haberet corpus ejus in Cur' ejusdem Stapule coram ipso J. M. & pefat' Constabular' die,

die, &c. tunc prox' sequen' ad respond' prefat' W. de predict' placito, pretextu cuius precept' predict' J. W. prefat' N. cepit & ipsum in Cur' ill' ad tunc & ibid' habuit, Absq; hoc qd' idem J. M. predict' N. ex causa per predict' W. superius allegat' capi fec' seu ipsum in predicta Prisonsa Domini Regis in custod' sua habuit prout predict' W. per Narr' suam predict' superius suppon', Et hoc, &c. Unde, &c.

Traverse.

Et predict' W. non cogn' aliqua per predict' J. M. superius allegat' dic' qd' ipse per aliqua preallegat' ab Actione sua predict' habend' precludi non debet, quia dic' qd' predict' J. M. prefat' N. ex causa per ipsum W. superius narrat' capi fecit & in Prisonsa predict' in custod' ipsius J. M. habuit prout idem W. superius allegavit, Et hoc pet' qd' inquiratur per Priam', Et predict' J. M. simil', Ideo, &c. Vide *Rast. Ent. 172. a.*

Repl' & Issue.

Where a voluntary Escape by the Gaoler shall not prejudice the Plaintiff.

Note, That upon a *Scire Facias* for the Execution of a Judgment, the Defendant pleaded that he was taken on an Execution upon the same Judgment, and brought to the Bar, and committed in Execution, and afterwards voluntarily permitted by the Gaoler to escape. Upon which the Plaintiff demurr'd, and had Judgment: 1. For that he had not concluded the Commitment *prout patet per Recordum*, for that is Matter of Record, and ought to be so pleaded; but Writs need not to be so pleaded, although they are Matters of Record, because they may be lost, and

perhaps they are never return'd. 2. A voluntary Escape by a Gaoler, without the Assent of the Plaintiff, shall not prejudice the Plaintiff, but that he may bring a new Execution, as 1. Cro. Mounson vers' Clayton, and Robinson vers' Clayton; and so it was adjudged Mich. 19 Car. 2. int' Simpson & Hunt, but Trin. 21. *dabitatur*, inter Crane & King. Vide 1 Lev. Rep. 211.

Q.

Upon an Escape, Return, and second Escape.

SEE 2 Lut. Ent. 132. Where 'tis held, That a Prisoner escaping in the Time of a former Gaoler, and returning into Prison, and there remaining in the Time of a new Gaoler, and then escaping again, the Plaintiff may charge the new or the old Gaoler at his Election.

Where the Execution was for less than recover'd.

Vide 2 San. 101. Where the Plaintiff had recovered 55 l. 10 s. and the *Ca' sa* upon which the Defendant was taken in Execution was only 51 l. 2 s. and the Plaintiff in an Action of Debt for an Escape recovered against the Sheriff the said 55 l. 10 s. it's said this Mistake in the Execution is not assignable for Error.

Debt

*Debt upon a Sheriff's Bond to prosecute a
Replevin in the County-Court, and to
save the Sheriff harmless. Bar per le
Stat. de 13 E. 1.*

*ET predict' C. per W. C. Attorn' suum Bar.
ven' & defend' vim & injur' quan-
do, &c. Et pet' auditum, &c. Quibus lectis
& auditis idem C. dic' qd' ipse de debito pre-
dict' virtute scripti predict' onerari non de-
bet quia dic' qd' predict' tempore confection'
scripti predict' Averia predict' in Conditione
predict' superius spec' ad queremoniam ip-
sius C. replegiat' & deliberat' fuer' eidem
C. per presat' nuper Vic' in Balliva sua vi-
delt' apud H. predict', Qdq; ad & super
huiusmodi deliberation' Averiorum ill' ut pre-
fertur scriptum predict' cum Conditione pre-
dict' exact' & capt' fuit per predict' nuper
Vic' colore dicti Officii sui Vic' & pretextu
Statuti in Parl' Domini Edwardi quondam
Regis Angl' primi apud Westm' in Com'
Middl' Anno Regni sui 13. tent' edit' que
quidem Conditio superius recitat' non est
talis qual' sed al' quam per Statut' ill' appun-
ctuat' & Ordinat' est in huiusmodi casu ca-
piend' & fiend' eadem Conditione in se con-
tinen' predict' Clausulam sive materiam de
salvando & indempn' conservando predict'
Vic' ejus Subvic' & Ballivos pro tangen' &
concernen' deliberation' dictorum Averio-
rum, Que quidem materia non contineri nec
esse debuit in dicta Conditione per formam
Statut' ill', Per quod scriptum predict' va-
cuum & nullius effectus in Lege existit, Et
hoc parat' est verificare, Unde pet' judic' si
ipse*

Quer' moratur.

' ipse de debito predict' virtute scripti pre
' dict' onerari debeat, &c. Quer', moratur
' in Lege, Et Def' jung' in morac'. Vide
' 1 Lut. 687.

The Condition runs thus :

THE Condition of this Obligation is such
That if the above-bounden C. C. do ap-
pear at the next County-Court to be holden
at A. and then and there do prosecute his
Action with Effect against W. R. for wrong-
ful taking and detaining his Cattle, to wit
Two Oxen as is alledged, and do make Re-
turn thereof, if Return shall be adjudged by
Law, and also do save and keep harmless the
said Sheriff, his Under-Sheriff, and Bailiffs
for, touching, and concerning the Delivery
of his said Cattle, then this Obligation to be
void, or else to be in Force.

Judic' pro
Quer'.

Judgment was given by the whole Court
That the Bond was good, and made accord-
ing to the common Practice.

Bar

Bar sur Account in Debt.

See in the Fourth Part of Instr. Clerical, in Bars concerning Apprentices and Servants, fo. 187, 226, &c.

First, by Way of Precaution it may be ob-
serv'd, that by an Act of Parliament, 4 & 5 Anne,
cap. 16. for Amendment of the
Law, it was enacted, That Actions of Account
shall and may be brought and maintained
against the Executors and Administrators of
every Guardian, Bailiff, and Receiver; and al-
so by one Joint-Tenant and Tenant in Com-
mon, his Executors and Administrators, against
the other as Bailiff, for receiving more than
comes to his just Share or Proportion; and
against the Executors and Administrators of
such Joint-Tenant, or Tenant in Common.

4 & 5 Anne,
cap. 16.

Account
against Exe-
cutors, Guar-
dians, &c.

And the Auditors appointed by the Court,
where such Action shall be depending, are im-
power'd to administer an Oath, and examine
the Parties touching the Matters in Question;
and for their Pains and Trouble in auditing
and taking such Account, have such Allow-
ance as the Court shall adjudge to be reasona-
ble, to be paid by the Party on whose Side
the Ballance of the Account shall appear to
be.

Auditors to
administer an
Oath, &c.

Nil

Nil debet per Priam' pleaded to Debt upon the Arrearages of an Account, Sur Account cum Quer'.

Nil debet & l'fuc.

¶ *ET* predict' J. per J. H. Attorn' suum ven' & defend' vim & injur' quando, &c. Et dic' qd' ipse non debet prefat' W. predict' 40s. nec aliquem denar' inde informa qua idem W. superius vers' eum narravit, Et de hoc pon' se super Priam', Et predict' W. similiter, Ideo 12, &c. *Vide Rast. Ent. 149. Simile de Surplusage de Account coram Auditoribus, Id. 150. b.*

Confession.

¶ *Confession de Account ove Plt', Rast. Ent. 150. a. Vide postea.*
 ¶ *Simile de Surplusage de Account coram Auditoribus. Id. 151. a.*

Bar per Admin'.

Bar qd' nunquam Administ'avit.

¶ *ET* predict' E. per R. C. Attorn' suum ven', &c. Et dic' qd' ipse de debito predict' virtute compoti predict' onerari non debet, quia dic' qd' ipsa nunquam administravit aliqua bona seu catalla que fuer' predict' J. H. tempore mortis sue, Et hoc parat' est verificare unde pet' judic' si predict' K. Actionem suam predict' vers' eam habere debeat, &c.

Repl' qd' Administ'avit.

¶ *Et* predict' K. dic' qd' ipse per aliqua pre allegat' ab Actione sua predict' habend' precludi non debet quia dic' qd' predict' E. di versa bona & catalla que fuer' predict' J. H. tempore mortis sue ut Administratrix bonorum & catallorum ipsius J. post mortem ejusdem

dem J. administravit videlicet apud D. in Com' M. Et hoc pet' qd' inquiratur per Priam', Et predict' E. similiter, Ideo, &c. Idem Rast. 149. b.

Demurrer by Executors to Debt upon a Simple Contract.

J. ' **E**T predict' W. & M. in propriis personis suis ven', Et dic' qd' ipsi ad Narr' predict' super simplici Contractu modo & forma predict' fundat' necesse non habent nec per legem terre tenentur respondere, Unde pet' judic' & qd' ipsi e Cur' hic dimittantur, &c. Super quo visa per Justic' hic Narratione predict' satis constat' eis eam minus sufficiens in Lege existere ad predict' W. & M. in responsum inde ponend' & maxime pro eo qd' dictus Contract' est simplex, Unde predict' C. per Legem terre Legem suam inde vadiasse potuit, Ideo cons' est qd' predict' E. nihil capiat per Breve suum predict' set sit in mia' pro flo' Clam' suo, Et predict' W. & M. eant inde sine die, &c. Vide Rast. Entr. Debt sur Arrearages de Account 3.

Demurr'.
Allowed with the Reasons thereof.

Bar per nil debet per Legem & Examinatio Attorn' Quer' sur Account coram Auditoribus, Secundum Stat' 5 H. 4. cap. 8.

J. ' **E**T predict' A. ven', &c. Et quoad predict' dict' 41. dic' qd' in Statuto apud Westm' Anno Regni Domini H. nuper Regis Angl' quarti post Conquum' quinto, inter alia, Ordinatur fuit qd' Justic' in Cur' Domini Reg' & alii Judices coram quibus fact' & Actiones

Bar secund' Stat. 5 H. 4. c. 8.

nes debet in quibus Quer' suppon' Defend'
 coram Auditoribus Assign' de diversis Recep-
 tionibus Debitis & Contract' int' eos habi-
 computasse & in Arreragiis super eisdem
 Compot' invent' fuisse, habeant potestatem
 examinand' int' Attorn' & alios quos eis vide-
 bitur & super hoc ad recipiend' Defend' ad
 eorum Legem inde faciend' vel triand' per
 Inquisitionem Exit' secundum discretionem
 Justic' & Judic' predict', Et dic' qd' ipse
 non debet presat' C. presat' 4 l. nec aliquem
 denar' inde nec detinet eidem C. Catallis
 predict' nec aliquam inde parcell' in forma
 qua idem C. superius vers' eum narravit, Et
 hoc parat' est Defendere contra ipsm' & se-
 ctam suam prout Cur' Regis hic cons', &c.
 Et pet' qd' predict' Attorn' predict' C. de
 narratione sua predict' examinetur, Et qd'
 ipse de predict' 4 l. ad legem suam facien-
 admittatur, &c. secundum formam Statu-
 predict', &c. Et super' hoc facta inde exami-
 nar' predict' Attorn' predict' C. Cons' et
 per Justic' hic qd' predict' A. vad' presat' C.
 inde necnon de Catallis predict' Legem suam
 se duodecima manu, pleg' de Lege T. & G.
 Et ven' cum Lege sua hic xv. P. Et dictum
 est presat' Attorn' predict' A. qd' tunc ha-
 beat hic eund' A. Magistrum suum in prop-
 persona sua ad proficiend' Legem suam pre-
 dict'. Vide Rast. Ent. 150. a. Vide Placit.
 Gen. 250.

Attorn'
 Quer' Exa-
 min'.

Aliter, Et examinatio Querentis pet', Et
 Quer' examinat' per Attorn' suum.

Bar.

N. ' E T predict' Def' per T. C. Attorn'
 suum ven' (&c. ut supra usque)
 hoc parat' est Defendere contra ipsam &
 sectam

' sectam suam prout Cur' Domini Regis hic
 ' Cons', &c. Et per' qd' Querens de & super
 ' Narratione sua predict' secundum form' Sta-
 ' tuti predict' examinatur, &c. Et qd' ipse ad
 ' Legem suam inde faciend' admittatur, &c.
 ' Et super hoc facta examinatione predict' W. Attorn'
 ' Attorn' Quer' pro eo qd' videtur Justic' hic Quer' Exa-
 ' qd' materia unde idem Querens per narratio- min'.
 ' nem suam allegavit Def' computasse non
 ' jacet nec jacebat in Compo', Ideo cons' est
 ' qd' predict' Def' vad' predict', Quer' inde
 ' Legem suam predict' se duodecima manu
 ' Pleg' de Lege A. B. & C. D. Et ven' cum
 ' Lege sua hic a die sancti Hill' in 15 dies, Et
 ' dict'm est prefat' Attorn' predict' Def' qd'
 ' tunc habeat hic eundem Def' Magistrum
 ' suum in propr' persona ad per ficiend' Legem
 ' suam predict'. Idem Rast. 150. b.

*Bar per Discharge des Auditors, Et Issue
 sur ceo.*

ss. ' **E**T predict' A. per A. B. Attorn' suum Bar qd' exo-
 ' ven', &c. Et dic' qd' predict' C. neravit Au-
 ' Action' non, &c. quia dic' qd' idem C. ditor'.
 ' tempus quo idem C. Assignavit prefat' S.
 ' & E. ad audiend' Computum ipsius A. &
 ' ante aliquem Computum coram ipsis S. & E.
 ' de receptione denar' predict' fact' apud O.
 ' in Com' S. exoneravit ipsos S. & E. de Com-
 ' puto predict' audiend', Et hoc parat' est ve-
 ' rificare, Unde pet' judic' si Actio, &c.
 ' Et predict' C. dic' qd' ipse per aliqua, &c. Issue qd' non
 ' precludi non debet quia dic' qd' ipse non ex- Bar.
 ' oneravit predict' S. & E. de Computo pre-
 ' dict' audiend' prout predict' A. superius al-
 ' legavit,

‘ legavit, Et hoc pet’ qd’ inquiratur per
 ‘ Priam’, &c. Ideo, &c. Idem, *Rast.* 150. a.

Bar per Payment in anter County.

Bar:

¶ ‘ **E**T predict’ A. in propr’ persona sua
 ‘ ven’, &c. Et dic’ qd’ Action’ non,
 ‘ quia dic’ qd’ ipse post Computum predict’
 ‘ scilt’ tali die & Anno, &c. apud S. in
 ‘ Com’ B. solvit prefat’ C. predict’ 100l. pro
 ‘ Arreragiis predict’, Et hoc, &c. Unde pet’
 ‘ judic’ si Actio, &c.

Repl’ & Is-
 sue.

‘ Et predict’ C. dic’ qd’ ipse per aliqua, &c.
 ‘ precludi non, quia dic’ qd’ predict’ A. non
 ‘ solvit eidem C. predict’ 100l. nec aliquem
 ‘ denar’ inde prout pred’ A. superius allegavit,
 ‘ Et hoc, &c. Ideo, &c. Idem, *Rast.* 150. a.

Non computavit coram Auditoribus.

¶ ‘ **E**T predict’ Def’ dic’ qd’ ipse non com-
 ‘ putavit coram Auditoribus de denar’
 ‘ predict’ in forma qua predict’ Quer’ nar-
 ‘ rant, &c. Vide *Placit’ Gen.* 250.

Confessio Actionis in Computo per Exec’.

Confessio.

¶ ‘ **E**T predict’ A. & B. per T. Attorn’
 ‘ suum ven’, &c. Et dic’ qd’ ipsi non
 ‘ possunt dedicere Action’ predict’ T. W. pre-
 ‘ dict’ nec quin ipse computavit coram prefat’
 ‘ Auditor’ de denar’ predict’, &c. prout pre-
 ‘ dict’ T. W. superius vers’ eos narravit, Ideo
 ‘ Cons’ est qd’ predict’ T. W. recuperet vers’
 ‘ prefat’ A. & B. debitum suum predict’ &
 ‘ dampna sua occasione detention’ debiti ill’ ad
 ‘ 40 s. eidem T. ex assensu suo per Cur’ hic ad-

Judic’ pro
 Quer’.

judicat' [de bonis & catallis que fuer' predict'
T. Testatoris tempore mortis sue in manibus
eorundum Exec' existen' levand' si habeant,
&c. Et si non habeant, &c. tunc dampna
predict' de Bonis & Catallis predict' A. &
B. propr' levand'] Et iidem A. & B. in
mia', &c.

Bar in Debt sur Annuity.

BAR, per non Detinet. Vide Bro.
Rediviv. 170.

Def' dic' qd' requisiver' Quer' dare eis Non Detinet.
Consilium & ipse recusavit.

ACTION' non, Quia dic' qd' Annual' Bar qd' Quer'
Reddit' predict' concess' fuit eidem recusavit dare
Quer' pro bono Consilio suo eisdem Def' Consilium.
impens' & postea impendend' prout predict'
Quer' superius allegavit, Et iidem Def' ul-
terius dic' qd' tempore concession' Annual'
Reddit' predict', predictus Quer' fuit homo
eruditus in communi Lege hujus Regni Angl',
Et qd' pred' Def' pro Consilio ipsius Quer'
in Lege antetunc impens' & imposterum
impend' fecer' scriptum illud eidem Quer',
Et qd' pred' Def' (tali die & Anno apud
W. in Com' predict' requisiver' predict' Quer'
eisdem Def' Consilium suum in Lege dare
pro defensu cujusdem Actionis in Ejectione
Firme vers' eosdem Def' ad sectam cujus-
dam B. W. in Cur' Domine Regine de B.
L coram

Rep^r qd'
Def^r non
requisiver^r
Consilium.

coram Justic^r ejusdem Cur^r apud Westm^r in
Com^r Midd^r tunc^r prosecut^r, quod facere pre-
dict^r Quer^r ut Consiliar^r ipsorum Def^r totalit^r
recusavit, Et hoc, &c. Unde, &c.
Precludi non, quia dic^r qd^r predict^r Def^r
non requisiver^r ipsum Quer^r dare eisdem Def^r
Consilium suum in Lege pro defensu predict^r
Actionis Ejection^r Fiume prout iidem Def^r
superius allegaver^r, Et hoc per^r, &c. Ideo, &c.
Vide Bro. Red. 190. & 1 Brownl. 112. Si-
milis Barr^r & Demurr^r inde, Pl. Gen. 274.

Bar per Rien Arrere.

Rien Arrere
& Issue.

¶ **E**T predict^r Def^r per A. B. Attorn^r
suum ven^r & defend^r vim & in-
jur^r, quando, &c. Et dic^r qd^r nichil pred^r die
impetrat^r Brevis Original^r predict^r Quer^r
Annui Reddit^r predict^r prefat^r Quer^r aretro
existit prout predict^r Quer^r superius versus
eum narravit, Et de hoc pon^r se super
Priam^r, &c. Vide Winch. Ent. 10.

Aliter &
Issue.

¶ Et predict^r W. per R. B. Attorn^r suum
ven^r & defend^r vim & injur^r quando, &c.
Et dic^r qd^r predict^r sex Libr^r de Arrerag^r
Annui Reddit^r predict^r aretro non existunt
nec aliquis denar^r inde aretro existit prefat^r
E. prout idem E. per Breve & Narr^r sua
predict^r superius suppon^r, Et de hoc pon^r se
super Priam^r, &c. Vide Pl. Gen. 106.

Aliter &
Issue.

¶ Quando, &c. Et dic^r qd^r nichil de An-
nual^r Reddit^r predict^r prefat^r J. ad Festum san-
cti M. Archi^r aretro sunt insolut^r, Et de hoc
pon^r se super Priam^r, &c. Vide Aston. 108.

Vide Rast. Ent. 35. Hern. 18. 3 Brownl. 11.

Non

Non concessit Annuitatem, & Issue.

¶ **Q**uando, &c. Et dic' qd' predict' R.
non concessit predict' Annuitatem
sive Annual' Reddit' 6l. 16 s. 4d. per scrip-
tum predict' pefat' A. P. pro termino vite
ejusdem A. concess' prout predict' J. per
Narr' suam predict' superius suppon', Et de Issue.
hoc pon' le super Priam', &c. Vide *Winch*,
Ent. 11.

Bar per Levy per Distress.

¶ **A**ction' non, &c. quia dic' qd' idem Bar.
R. F. diu ante diem impetrat' Bre-
vis predict' levavit predict' 40 l. de Arrera-
giis Annui Reddit' predict' per diversas Di-
strictiones in Messuagiis terr' & tenementis
ipsius D. G. predict' fact', Et hoc, &c. Un-
de, &c.
Precludi non, quia dic' qd' ipse non leva- Repl' qd' non
vit predict' 40 l. per diversas Distractiones in levavit.
Mess' terr' & tenementis ipsius G. D. prout
idem G. superius allegavit, Et hoc pet' qd'
inquiratur Priam', &c. Vide *Ast.* *Ent.* 113.
Rast. *Ent.* 40. *Co.* *Ent.* 49.

¶ **Q**d' Des' Feoffavit Quer' de parte ter- Per Feoff-
rarum onerat' cum redditu, Et Repl' qd' ment & Issue.
non Feoffavit. *Ast.* *Ent.* 115.

¶ Pro parte, Bar per Release, pro al' Several Bars.
parte rien arrere, pro resid' non inform'.
Vide *Placit'* *Gen.* 104.

Vide plus inde, *Rast.* 35, 36, 37, 104. 1 *Brownl.*
7. 112. 3 *Brownl.* 10. *Ast.* 108, 111, 113, 115.
Winch. 10, 11, &c. *Placit'* *Gen.* 99. 104.

Several Judgments.

§. 'JUDIC' inde pro Quer' sur Annuity grant
pur Vie, *Ast.* 114.

§. 'Simile pur les Arrerages des Deniers &
' frument, *Ast.* 114.

§. 'Cogn' Action' inde, *Ast.* 114, 109.
' Pl. Gen. 102, 105.

§. 'Judic' inde sur Demurrer pro Quer'.
' 7 Co. 11. 2 part, *Towns Jud.* 23. Simile pro
' Def' *Raft.* 104.

§. 'Simile super Veredicto, *Raft. En.* 36, 40.
' Co. *Enr.* 60. 2 part, *Towns Judg.* 23, 24, &c.

Nil debet in-
fra sex Annos.

Note, That in Debt for the Arrearages of a
Rent-Charge against the Defendant as Pernour
of the Profits, the Defendant pleaded *Nil debet
infra sex Annos*; but it was held ill upon Demur-
rer, because the Defendant had not concluded
his Plea to the Country, but with *hoc paratum
est verificare, &c.* Vide 1 *Saund.* 280.

Bar in Debt sur Contract.

§. 'VIdē ante Bar per Payment, per De-
' livery, & Acceptance des autres
' choses.

Bar

Bar in Debt sur Emisset.

ff. ' **N**il debet per Patriam, i Bro.
166.

ff. ' Et predict' A. B. per R. B. Attorn' Bar qd' fec'
' suum ven', &c. Et dic' qd' Action' non, quia script' Obl'
' dic' qd' post emptionem Bonorum & Catal- pro secura so-
' lorum predict' apud S. in Com' C. pro se- lutione de-
' cura solutione dictarum rol. fecit prefat' C. nar'.
' quoddam script' Obl' per quod idem A. tene-
' batur & obligabat' prefat' C. in predict' rol.
' certo Termino in eodem scripto content'
' eidem C. solvend', Et hoc, &c. Unde pet'
' judic' si predict' C. Action' suam predict' de
' vel pro emptione Bonorum & Catallorum
' predict' vers' eum habere debeat, &c.

' Et predict' G. dic' qd' precludi non, quia Repl' qd' non
' dic' qd' predict' A. non fecit eidem C. pro sec'.
' secura solutione predict' rol. aliquod scriptum
' Obl' prout pred' A. superius allegavit, Et hoc
' pet' qd' inquiretur per Patriam, Et predict'
' A. similic', Ideo, &c. Vide Pl. Gen. 277.

ff. ' Qd' solvit denar' pro terris vendit. Rast.
' Entr. 87.

ff. ' Protest' qd' fecit script' pro denar' pro
' Placito nil debet per Patriam. Rast. Entr. 204.

ff. ' Qd' emebat oves pro 3 l. 11 s. 3 d. Unde Sa'e on Con-
' solvit 3 l. & sub Conditione qd' non solveret dition.
' 11 s. 3 d. resid' si oves non fuer' sane, Repl'

‘ qd’ emebat modo & forma prout, &c. Idem
 ‘ Rast. 205.

*Al Emisset de Mercimon’, Def’ placitat’ Deins
 Age, & simile al Mutuat’, Repl’ al Mutuat’
 qd’ fuit plene eratis, & al’ Emisset qd’
 Merc’ fuer’ empt’ pro necessar’ vestitu, &c.*

Bar per infra ff.
 etat, &c.

Simile.

Repl’ qd’ fuit
 plene Etat’
 & Issue.

‘ **E**T predict’ C. per C. W. Attorn’ scum
 ‘ ven’ & defend’ vim & injur’ quan-
 ‘ do, &c. Et quoad 21 l. 10 d. de debito pred’
 ‘ quos pred’ W. virtute emptionis predict’ supe-
 ‘ rius exigit vers’ eum dic’ qd’ predict’ W.
 ‘ Action’ suam predict’ inde vers’ eum habere
 ‘ non debet quia dic’ qd’ ipse tempore emptio-
 ‘ nis predict’ fuit infra etat’ 21 Annorum, Et
 ‘ hoc parat’ est verificare, Unde pet’ judic’ si
 ‘ predict’ W. Action’ suam predict’ inde vers’
 ‘ eum habere debeat, &c. Et quoad predict’
 ‘ 19 s. & 2 d. de debito predict’ quos predict’
 ‘ W. virtute mutui predict’ similiter exigit vers’
 ‘ eum, dic’ qd’ predict’ W. Action’ suam pre-
 ‘ dict’ inde versus eum habere non debet quia
 ‘ dic’ qd’ ipse tempore mutui predict’ similiter
 ‘ fuit infra etat’ 21 Annorum, Et hoc parat’ est
 ‘ verificare, Unde pet’ judic’ si predict’ W.
 ‘ Action’ suam predict’ inde vers’ eum habere
 ‘ debeat, &c.

‘ Et predict’ W. quoad pred’ placitum pred’
 ‘ C. ad predict’ 19 s. 2 d. quos predict’ W.
 ‘ virtute mutui exigit vers’ prefat’ C. dic’ qd’
 ‘ ipse per aliqua per prefat’ C. in eodem pla-
 ‘ cito preallegat’ ab Actione sua predict’ inde
 ‘ habend’ precludi non debet, Quia dic’ qd’
 ‘ predict’ C. tempore ejusdem mutui fuit plene
 ‘ etatis 21 Annorum & amplius & non infra
 ‘ etat’ prout predict’ C. superius allegavit, Et
 ‘ pre-

‘ hoc pet’ qd’ inquiratur per Patriam, Et pre-
 dict’ C. similiter, Et quoad predict’ placitum
 predict’ C. quoad predict’ 21 l. & 10 d. de
 predict’ 22 l. resid’ quos ipse virtute emptio-
 nis predict’ similiter exigit vers’ prefat’ C. idem
 W. dic’ qd’ ipse per aliqua in eodem placito
 preallegat’ ab Actione sua predict’ de eodem
 21 l. & 10 d. habend’ precludi non debet
 quia dic’ qd’ predict’ Mercimonia per prefat’
 C. de eodem W. in forma predict’ empt’
 fuer’ empt’ de eodem W. pro necessar’ Ap-
 paratu & vestit’ Corporis predict’ C. gradu
 suo eadem requiren’. Et hoc parat’ est veri-
 ficare unde per’ judic’ easdem 21 l. & 10 d.
 una cum dampnis suis occasione detentionis
 earundem 21 l. & 10 d. sibi adjudicari, &c.

**Qd’ Mercimonia fuer’
 pro necessar’
 Apparatu.**

‘ Et predict’ C. quoad predict’ placitum
 predict’ W. ad predict’ 21 l. & 10 d. per
 eundem W. virtute emptionis predict’ superius
 exact’ superius replicando placitat’, dic’ qd’
 predict’ Mercimonia per ipsum in forma pre-
 dict’ empt’, non empt’ fuer’ de predict’ W.
 pro necessar’ apparatu ut vestit’ corporis ip-
 sius C. prout predict’ W. superius inde alle-
 gavit, Et hoc pet’ qd’ inquiratur per Patriam,
 Et predict’ W. similiter, Ideo quoad triand’
 tam Exit’ ist’ quam predict’ al’ Exit’ int’
 partes predict’ superius junct’ precept’ est Vic’
 qd’ venire fact’, &c. Vide Co. Ent. 125. b.

Rejo’ & Issue.

¶ ‘ Bar per Prior’ qd’ res non devener’ ad
 usum Convent’. Rast. Ent. 152.

Bar en Debt sur Mutuat'.

*Qd' Quer' accommodavit ei Denar' sub
Conditione non performat'.*

Bar per Con-
cordat', &c.
quoad 20 l.

Sub Condi-
tion' de Feoff-
ment per
Trustees.

Money lent
upon the Con-
dition.

¶ **E**T predict' R. per J. N. Attorn' suum
ven', &c. Et dic' qd' Action' non,
Quia quoad predict' 10 l. quas idem J. virtute
mutui predict' superius exigit vers' eum dic'
qd' die & Anno supradict' apud N. predict'
concordat' fuit int' ipsos R. & J. qd' cum
E. B. & T. B. qui tunc fuer' seic' de tentis
pred' cum pertin' in Dominico suo ut de feo-
do ad usum ipsius R. & hered' suorum iidem E.
& T. fecer' inde statum pefat' J. hend' sibi &
hered' suis imperpetuum, Et qd' idem J. ac-
commodaret eidem R. easdem 10 l. sub hac
Conditione, Qd' si & quando idem J. feoffaret
ipsum R. de tentis' predict' cum pertin' ha-
bend' sibi & heredibus suis imperpetuum tunc
idem R. solveret eidem J. 10 l. & aliter non,
Et idem R. dic' qd' predict' J. tunc & ibm'
pretextu concordie ill' accommodavit eidem
R. easdem 10 l. sub Conditione predict',
Et qd' idem J. ipsum R. de tentis' predict'
cum pertin' non Feoffavit, Et dic' qd' ipse
semper post contract' predict' fuit & adhuc
est parat'olvere pefat' J. predict' 10 l. in
casu quod idem J. ipsum R. de tentis' pre-
dict' cum pertin' Feoffare velit, Et hoc pa-
rat' est verificare, Unde pet' judic' si predict'
J. Action' suam predict' de predict' 10 l.
vers' eum habere debeat, &c. Et quoad pre-
dict'

dict' 20 l. quas predict' J. virtute Dimission' Quoad 20 l.
 predict' superius exigit vers' eum idem R. Demise sub
 dic' qd' predict' J. die & Anno supradict' Condit' non
 apud N. predict' dimisit eidem R. tenementa perform'.
 predict' cum pertin' habend' eidem R. ab
 eodem die per unum Annum integrum tunc
 prox' sequen', Absq; aliquo inde Reddendo,
 Et ulterius de Anno in Annum ad voluntat'
 eorundem R. & J. Reddend' eidem J. quoli-
 bet Anno post predict' primum Annum quam-
 diu idem R. tenementa ill' cum pertin' vir-
 tute Dimission' ill' haberet & occuparet 100 s.
 and Fest' sancti M. Archi' & Annunc' beate
 M. aquis portionibus, sub ista Condit' qd'
 si predict' J. solveret eidem R. 25 Marc' ad
 Fest' sancti M. Arch' prox' post Dimission'
 predict' fact' tunc Dimissio ill' staret in suo
 robore & effect' alioquin pro nullo haberetur,
 Et idem R. dic' qd' predict' J. non solvit
 eidem R. easdem 25 Marc' ad idem Festum
 sancti M. secundum formam Conditionis pre-
 dict', Absq; hoc qd' idem J. dimisit eidem
 R. tenementa predict' cum pertin' simplicit'
 in forma qua idem J. superius allegavit, Et
 hoc, &c. Unde, &c.

Traverse.

Repl' al
Demise.

Precludi non, quia quoad predict' 20 l.
 dic' qd' ipse dimisit pefat' R. tenementa pre-
 dict' cum pertin' simpliciter absque Condi-
 tione per predict' R. superius allegat' prout
 idem J. superius vers' eum narravit, Et hoc
 pet' qd' inquiratur per Patriam & predict' R. similiter, Et quoad predict' 10 l. idem J.
 dic' qd' predict' R. mutuat' fuit de ipso J.
 easdem 10 l. simpliciter in forma qua idem J.
 superius narravit, Absq; hoc qd' predict' R.
 mutuat' fuit predict' 10 l. de eod' J. sub
 Conditione per ipsum R. superius allegat',
 Et hoc parat' est verificare, Unde pet' judic'
 &

Simile al Mu-
tuat'.

Issue sur Mu-
tuat'.

' & predict' debitum suum 30 l. unacum damp-
' nis, &c. sibi adjudicari.
' Et predict' R. dic' qd' ipse mutuat' fuit
' predict' 10 l. de p'fat' J. sub Conditione per
' ipsum R. superius allegat' prout ipse superius
' allegavit, Et de hoc pon' se super Patriam,
' Et predict' J. similiter, Ideo 12, &c. *Vide*
' *Rast. Ent. 153.*

¶. ' Non debet denar' mutuat'. *Placit'*
' *Gen. 257.*

Bar en Debt sur Escape. Vide ante.

Bar en Debt sur Arbitrement sans Specialty.
Vide ante.

Bar Sur' Obl' de Arbitrement. Vide ante.

Bar en Debt sur Amerciament.

Nil debet per Legem.

Bar.

¶. ' **E**T predict' A. per B. &c. ven', &c.
' Et dic' qd' ipse non debet p'fat' C.
' predict' 4 l. nec aliquem denar' inde in for-
' ma qua idem C. superius vers' eum narravit,
' Et hoc parat' est Defendere contra ipsum &
' sectam suam per Legem ipsius A. prout Cur'
' hic cons' inde faciend', &c. Unde pet' judic'
' si predict' C. Action' suam predict' vers' eum
' manutenere debeat, &c.

Et

‘ Et predict’ C. dic’ qd’ predict’ Defensio Quer’ mo-
predict’ A. per Legem suam faciend’ pre- ratur.
tens’ non est sufficiens Exit’ nec admittibilis
ad ipsum C. contra predict’ materiam in
Narr’ ipsius C. content’ ab Actione sua pre-
dict’ habend’ precludend’, Unde pet’ judic’
& debitum unacum dampn’, &c. pro defect’
sufficien’ Responsionis & Exit’ in Lege sibi
adjudicari, &c.

‘ Et predict’ A. ex quo predict’ Responsio Def’ jung’
& dicta Defensio sua per Legem suam faciend’ in morat’
in forma predict’ pretens’ sufficiens’ Respon-
sio & Exitus admittibiles sunt in Lege ad pre-
dict’ C. ab Actione sua predict’ habend’ pre-
cludend’ & predict’ C. Legem ipsius A. in
hac parte faciend’ admittere omnino recusat
pet’ judic’ & qd’ predict’ C. ab Actione sua
predict’ habend’ precludatur, &c. *Vide Rast.*
Ent. 151. b. Simile placitum, Et Def’ per
fecit Legem inde, *Co. Ent. 119.*

Nil debet per Patriam.

ff. ‘ Et predict’ A. per M. A. Attorn’ suum Bar & Issue.
ven’ & defend’ vim & injur’ qu’, &c. Et
dic’ qd’ ipse non debet pefat’ T. G. eosdem
40 s. nec aliquem denar’ inde in forma qua
idem T. G. superius vers’ eum narravit, Et
de hoc pon’ se super Patriam, Et predict’
T. G. similiter, &c. Ideo, &c. *Vide Ast.*
Ent. 177. al’s 209.

ff. ‘ Debet per Magistrum Gardian’ & Com- Bar qd’ Def’
mitat’ Naupegorum de Reddrith in Com’ fuit de al’
Surr’ de Fine imposit’ super Def’ pro non Fraternitat’
comparenc’, &c. Barr’ qd’ Def’ fuit liber
homo de Civitat’ London de Fraternitat’ de
les Shipwrights que habuit Cur’ pro guberna-
tion’

Demur' &
Judic' pro
Def'.

'tion' Fraternitatis, Et ut un' Fraternitat' de-
'buit fore Attenden' ibim' per quod denegavit
'fore Membrum dicte Communitat'. Quer'
'moratur in Lege, Et judic' pro Def'. Vide
'*Rob. Ent.* 207.

Bar qd' Def'
nunquam ju-
rat' fuit ob-
servare Or-
dinationes.

'§. Debt per Magistrum & Gardian' Scilicet
'forum vers' Attorn' de Fine imposit' super
'Def' in recusand' fore de Vestitu, Bar &
'Def' confess' qd' admissus fuit liber Frater-
'nitatis, Sed per Constitution' ejusdem nullus
'liber homo tenetur observare Leges vel solvere
'penas super eum assess' nisi jurat' fuit ad ob-
'servand' Ordinationes Fraternitat' predicta
'Et qd' ipse nunquam jurat' fuit. Vide *Winch*
'*Ent.* 253, &c.

Bar, That
Defendant
had not taken
the Sacra-
ment, *secund'*
Statut'.

'§. Debt per Major' & probos homines de
'*Gilford* pro penalitate in fraction' de *By-Law*
'Bar & Def' placitat' Act' de 13 Car. 2. qd'
'nulla persona eligeretur ad aliqua Officia que
'infra unum Annum prox' ante non cepisset
'Sacrum' Cene Dominice secundum Eccle-
'siam Anglicanam quod Def' non recepisset
'per quod fuit inhabilis & Electio fuit vacua
'Demurr' inde. Vide 2 *Ven.* 244.

The Defendant was chosen to be a Bailiff of the Town, and refused to serve the Office; and being a Protestant Dissenter, he pleaded as above; and in the Argument of this Case Sir *John Read's* Case was cited, who was made Sheriff of *Hertfordshire*, and being then under Excommunication could not receive the Sacrament, and therefore after he had held the Office for Three Months left off, and did not attend at the Assizes, for which he was fined 500*l.* And after Argument in the *Exchequer*, where

where it was insisted on, That the Act of 25 Car. 2. made for preventing of Dangers that might arise from Popish Recusants, did void the said Office upon his not having taken the Sacrament, and he was disabled to do it by reason of his Excommunication; yet he was adjudged in the *Exchequer* to pay the 500 l. Fine.

But the Court held here that the Matter pleaded by the Defendant was a good Bar; for in regard the Act of 13 Car. 2. had enacted, That none should be chosen who had not receiv'd the Sacrament within One Year before such Choice, and there could be no Refusal before the Election, it was plain that the Defendant had not incurr'd the Benefit of the By-Law; and it differ'd from the Case of *Sir John Read*, for he was once actually in the Office, and obliged thereupon to do all Things necessary for his proceeding in it; but here in this Case, to make a Default in the Defendant, there must have been an Election antecedent, and the Election of such an one as the Defendant is, is absolutely prohibited by the Statute.

Plea held good.

Difference.

There were also Two Exceptions taken to the Declaration :

1. The By-Law is said to have been, That if any Inhabitant should be chosen; whereas they cannot make By-Laws to bind all the Inhabitants of the Town, but only the Freemen or Members of the Corporation.

Exceptions to the Narr^r.

2. The Usage is set forth, That the Election should be *die Lune prox' post Festum sancti Mich' Arch'*; and the Election of the Defendant is alledged to be upon the 30th of September, but it was not shewn that it fell upon the Monday; and that the Court cannot take

Want of Allegation of the Day.

Notice

Notice of it, or consult the *Almanack*, as this Case is, where it ought to have been set forth in Pleading.

Judic' pro
Def'.

And the Court held these Matters incurable, and so Judgment was given for the Defendant. *Vide 2 Vent. 247, 248.*

Upon an Amercement in a Leet.

Demur' al
Narr'.

J. **D**Ebt upon was brought for an Amercement in a Leet, and shews that the Defendant was present, and amerced, *Quod quidem Amerciament afferat' fuit per omnes Jur' ad 40 s.* The Defendant demurs generally; and by the Court the Declaration is not good:

1. Because it was not shewn for what Sum the Amercement was made; and yet there are some Precedents so, as *Rast. Ent. 553. a. 553. b. 109. b.*

Afferement,
how.

2. The Afferement ought to be by Officers which are chosen by the Steward, and not by the Jury, and having a special Oath for that Purpose, as in *Hob. 129. Wilson vers' Hardingham*, in both Points: Whereupon Judgment was given for the Defendant. *Vide Lev. Ent. 62. & 3 Lev. Rep. 206.*

Judic' pro
Def'.

Afferers
Names.

The Afferers Names ought to be shewn in Debt for an Amercement, *3 Keb. 362, 363.*

Upon a By-Law not to use his Trade.

Demurr' al
Narr'.

Et Judic' pro
Def'.

IN Debt for Breach of a By-Law, That no Person, being a Freeman, &c. should exercise his Trade within the Borough, upon Forfeiture of 5 s. per diem, &c. Defendant demurr'd; and Judgment for the Defendant, that the By-Law was not good. *Vide 1 Lut. 562, 564.*

§. Debt by the Mayor, &c. of Canterbury Upon a Com-
for the Breach of a By-Law: They had di- mon Council-
vers Charters, and one after the making of the man's resign-
By-Law, by which it was ordained, That if ing his Office.
any of the Common-Council should volun-
tarily resign, &c. he should immediately pay
to the Use of the Corporation 10*l*. And that
the Defendant had resign'd, &c. and had not
paid, &c.

§. ' Et predict' G. H. per R. D. Attorn' Bar per Nil
' suum ven' & delend' vim & injur' quando, debet.
' &c. Et dic' qd' ipse non debet prefat' Ma-
' jori Ballivis & Burgens' predict', predict' 10*l*.
' nec aliquem inde denar' modo & forma pro-
' ut predict' Major' Ballivi & Burgens' superius
' vers' eum narraver', Et de hoc pon' se super
' Patriam, Et pred' Major' Ballivi & Burgens' Issue.
' similic', &c. Ideo precept' est Vic', &c.

Hereupon Verdict was given for the Plaintiff.
And it was afterwards moved in Arrest of Judg-
ment; 1. For that no Resignation could be made Exceptions
but only to the Mayor. 2. That the Resignation al Verdict.
ought to have been by Deed, for the Defen-
dant had Freehold. 3. That no Notice was
given to the Defendant of the By-Law, and
that he was no Member of the Corporation at
the Time of making of the By-Law. 4. That
the Corporation which was at the Time of
making of the By-Law was dissolved by the
last Charter.

But all the said Exceptions were over-ruled, Judic' pro
and Judgment was given for the Plaintiff. Vide Quer'.

1 Lut. 402, 405, &c. See more of By-Laws
in a Treatise, intituled, *The Law of Trade, &c.*

Vide Postea, Tit' Replevin, & Tit' Trespass.

Bar

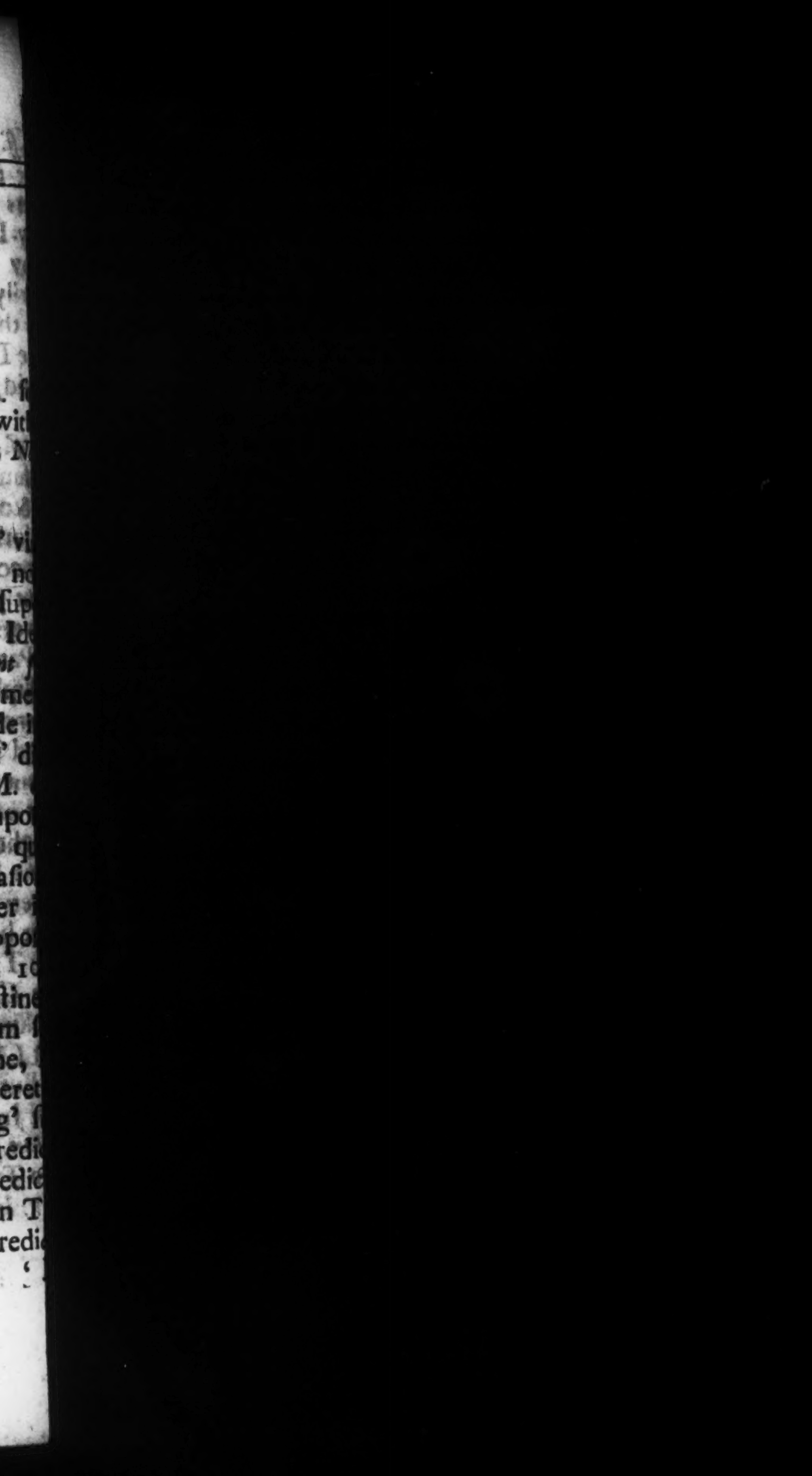
*Bar in Debt sur Statute Ley.**Vide Postea Bar per Statute Ley.*

DEbt upon the Statute 8 Eliz. cap. 2. for arresting in the Name of another without his Consent. The Defendant pleads *Non Cul'*.

Non Cul' & Issue.

*ff. ' Et modo, &c. Et idem E. Defend' vi
' & injur' quando, &c. Et dic' qd' ipse no
' est inde Culpabilis, Et de hoc pon' se sup
' Patriam, Et predict' J. similis, &c. Ide
' ven' inde Jur', &c. Verdict and Judgment
' the Plaintiff. Et Jur' unde infra fit me
' tio exact' similis ven' quia ad veritat' de i
' fracontent' dicend' elect' triat' & jurat' d
' super Sacrum' suum qd' predict' E. M.
' Culpabilis de infra script' ei interius impo
' prout predict' J. A. interius vers' eum qu
' ritur, Et assidunt dampna ipsius J. occasio
' infra script' ultra mis' & custag' sua per
' sum circa sectam suam in hac parte appo
' ad 40 s. Et pro mis' & custag' ill' ad 10
' Ideo Cons' est qd' predict' E. M. sustine
' imprisonament' corporis sui per spacium
' mensium absque ballio sive manucaptione,
' qd' ipse antequam extra Prisonam deliberet
' solvat prelat' J. A. dampna & custag' s
' predict' per Jur' predict' in forma predic
' assess' in Triplo juxta formam Statut' predic
' Que quidem dampna mis' & custag' in T
' plo se attingunt ad 7 l. & 10 s. Et predic*

*Dampna, &c.
in Triplo.*



E. M. capiatur, &c. *Vide Coke's Ent.* 160. b.
161. Simile Judic', *Ast.* 101. *Vide simile*
placitum Non Cul', Hans. Ent. 82.

¶ In an Action upon the said Statute against
an Attorney of the Common-Pleas, for ar-
resting one in the Name of another without
his Privy or Consent, Defendant pleads *Nil*
debet per Patriam.

Et predict' J. per W. R. Attorn' suum ven' & defend' vim & injur' qu', &c. Et dic' qd' ipse non debet pefat' S. predict' 210 l. seu aliquem inde denar' in forma qua predict' Sa' superius vers' eum narravit, Et de hoc pon' se super Patriam, Et pred' S. similiter, &c. Ideo precept' est Vic' qd' Venire Fac' hic in Cro' Asc' Domini xii. &c. Per quos, &c. Et qui nec, &c. Ad recogn', &c. qui tam, &c. *Vide 1 Lut.* 166, 168, &c.

Bar per Nil
debet & 16
sue.

The Exceptions following were moved in Exceptions.
Arrest of Judgment :

1. For that the Statute upon which the
Action was founded is misrecited; for the
statute speaks of several Courts particularly,
and then says, In other Cities and Places in
which Actions of Debt, Trespas, and other
personal Actions, &c. And the Declaration is
general in any Actions personal, enumerating
them as Debt, Trespas, &c.

2. That an Attorney is not within the Statute,
which, as one may well think should be so,
(above all other Persons) *Causa patet.*

3. That the Action does not lie before Con-
viction, *Cro. Jac.* 188. *contra.*

M

4. That

Judic' pro
Def.

4. That the prosecuting of a Writ out of the Common Pleas was not within the Statute, and so was the Opinion of the whole Court; and therefore Judgment was given for the Defendant without any Regard to the other Exceptions. *Vide Judic', Rast. Ent. 101.*

ff. 'Protestando non levavit querelam pro
'placito non causavit prefat' R. arrestari, &c.
'Et sic dic' qd' non debet prefat' R. predict'
'Centum Marcas, &c. Et de hoc pon' se super
'Patriam, &c. Ideo, &c. *Rob. Entr. 413.*
'Vide Co. Ent. 165. vers' Attorn' pro defect'
'Warrant'.

For Tythes.

ff. 'Placitum ad Narr' in debito sur Stat'
'de 2 E. 6. for treble the Value for not setting
'forth Tythes.

Bar per Nil
debet.

Part found
for the Plain-
tiff, and Part
for the Defen-
dant, and
Judgment gi-
ven.

'Et idem J. defend' vim & injur' quan-
'do, &c. Et dic' qd' ipse non debet prefat'
'R. B. & S. predict' 150 l. nec aliquem inde
'denar' prout predict' R. & S. superius vers'
'eum queruntur, Et de hoc pon' se super Pa-
'triam, Et predict' R. & S. similiter &c. Ideo
'ven' inde jur', &c. *The Jury find Part for the
'Plaintiff, and Part for the Defendant.* Ideo
'nullus habet respectum tam ad predict' 12 d. pro
'dampnis quam ad predict' 12 d. pro nomini
'& custag' predict' per Jur' predict' in forma
'predict' Assess' Cons' est qd' predict' R. B.
'& S. recuperent vers' prefat' J. S. debitum
'suum predict' per Jur' predict' in forma pred'
'compert', Et predict' J. S. in mia', &c.
'Et similiter predict' R. B. & S. in mia' pro
'fio' clamore suo vers' pro prefat' J. S. eo qd'
'idem J. S. de rend' debiti predict' per Jur'
'pre-

‘ predict’ superius acquietat’ existit, Et idem
 ‘ J. S. eat inde sine die; &c. Vide Co. Ent.
 ‘ 161, 162. Vide Judic’ sur mesme Stat’ in
 ‘ Triplo, *Ast. Ent.* 102.

§. ‘ Al Narr’ in debito pro decimis, Barr’ Bar, that the
 ‘ qd’ terre fuer’ parcell’ nuper Priorat’ dissolut’ Land were
 ‘ de M. Et ult’ Prior & omnes Predecessores Tythe-free.
 ‘ habuer’ terras exempt’ a solutione Decima-
 ‘ rum usque tempus dissolutionis. Repl’, qd’
 ‘ Decime solubil’ fuer’ infra 40 Annos prox’
 ‘ ante dissolution’, &c. Et traverse Prescrip-
 ‘ tion’. Rejoinder & Issue sur le Traverse,
 ‘ *Thomps. Ent.* 137.

§. ‘ Similis Narr’, Bar al Part, Nil debet Similis Bar.
 ‘ per Patriam al resid’-qd’ terr’ fuer’ parcell’
 ‘ nuper dissolut’ Hospital’ sancti Johannis Je-
 ‘ rusalem per Def’ & Antecessores suos gavis’
 ‘ & excult’, Et qd’ ultimus Prior & Predecessor
 ‘ habuit terras exempt’ a solutione Decimarum
 ‘ tempore dissolutionis & abinde per sepeal’
 ‘ Statut’. Vide *Winch. Ent.* 344. Simile 346.

*Debt sur Statute de Perjury, 18 Eliz. per
 qui tam. Et nil debet per Patriam.*

§. ‘ **E**T idem E. C. defend’ vim & injur’ Bar and Issue
 ‘ quando, &c. Et dic’ qd’ ipse non de-
 ‘ bet dicto Domino Regi & pefat’ H. qui
 ‘ tam, &c. predict’ 20 l. nec aliquem inde
 ‘ denar’ modo & forma prout predict’ H. qui
 ‘ tam, &c. superius vers’ eum queritur, Et de
 ‘ hoc pon’ se super Patriam, Et predict’ H.
 ‘ qui tam, &c. Similit’, &c. Ideo ven’ inde
 ‘ jur’. Vide Co. Ent. 165. b. Simile placitum,
 ‘ Vide *Ast. Ent.* 101.

Non Commi-
sit perjur' vo-
luntar'.

¶ ' Quando, &c. Et dic' qd' ipse non com-
' misit perjurium voluntar' contra formam Sta-
' tut' predict' prout predict' A. per Narr' suam
' predict' superius suppon', Et de hoc, &c.
' Ideo, &c. Vide Co. Ent. 166. & Rast. Ent.
' 482.

*Debt vers' Informer for making Compo-
sition without Licence: Et nil de-
bet per Patriam.*

¶ ' **E**T predict' T. per T. P. Attorn' suum
' ven' & defend' vim & injur' quan-
' do, &c. Et quicquid, &c. Et dic' qd' ipse non
' debet prefat' J. qui tam, &c. predict' 101.
' nec aliquem inde denar' in forma qua idem
' J. qui tam, &c. superius vers' eum narravit,
' Et de hoc pon' se super Patriam, Et predict'
' J. qui tam, &c. similiter, Ideo precept' est
' Vic', &c. Verdict' pro Quer'. — Ideo consi-
' deratum est qd' predict' J. recuperet vers'
' predict' T. predict' 101. per prefat' T. in
' forma predict' forisfact', Unde idem Domi-
' nus Rex unam medietat' inde, Et predict' J.
' qui tam, &c. habeat alteram medietat' secun-
' dum formam Statuti predict', Et predict'
' T. in Mia', &c. Vide Ast. Ent. 89.

*Simile placitum de Nil debet per Patriam ad
Debt sur Statut', Winch. Entr. 198,
210, 212.*

¶ ' **D**efendant pleads Nil debet per Patriam
' to an Action of Debt upon the
' Stat' 5 Eliz. 13. against Surveyors of the
' High

Highways, for not stopping of a Pit which they dig for Sand, &c. *Vide Ast. Ent. 81, 84.*

To an Action in the Exchequer upon the Statute of 21 Hen. 18. cap. 13. for taking a Farm by Demise for Years: Bar, That he had not sufficient Glebe, &c. and that he applied the Profits, &c. to the Use of his Family. Repl', and traverses, That the Defendant had applied the Interest of the Farm for the Expences of his Family.

§. Et C. H. Gen. Attorn' Domini Regis Repl'.
qui pro eodem Domino Rege sequitur, Et predict' T. B. pro seipso dic' qd' predict' L. L. per aliqua preallegat' seipsum a forisfactur' defendere aut excusare non debet, Quia dic' qd' idem L. habuit & tenuit ad Firmam predict' tres Acr' Pastur' per predict' spacium in predict' Information' spec' contra formam Statut' predict' modo & forma prout per Information' predict' superius allegatur, Asque hoc qd' idem L. totum increment' inde provenien' per totum tempus in dicta Informat' spec' posuit & applicuit ad & pro expens' Familie & hospitalitat' suarum predict' modo & forma prout idem L. superius placitando allegavit, Et hoc predict' Attorn' Domini Regis & T. B. parat' sunt verificare, Unde ex quo predict' L. habuit & tenuit ad Firmam predict' tres Acr' Pastur' superius cogn' per iudicium, Et qd' idem L. predict' 460 l. forisfaciat, &c. *Vide 1 Lut. 134, &c.*

§. De terris tent' ad Firmam per Vicarium, Vicar.
Bar qd' non tenuit ad firmam, 27 H. 8. 21.
Vide Kitch. 119, 121.

Non resi-
dence.

*Debt upon the Statute of 21 H. 8. cap. 13.
de Non residence, Def' placitat' qd' ipse
est Homo laicus.*

Bar, qd' Def'
est Homo
laicus.

¶ **E**T predict' W. in propr' persona sua
ven' & defend' vim & injur' quan-
do, &c. Et quicquid, &c. Et dic' qd' pre-
dict' R. C. Action' suam predict' vers' eum
habere non debet, Quia protestando non
cogn' aliqua in Narr' predict' fore vera, Pro
placito tamen, Idem W. dicit qd' ipse pre-
dict' primo die Marcii Anno 33. supradicto
& semper postea fuit & adhuc est Homo
laicus & temporalis Persona, Absq; hoc qd'
ipse eodem primo die Marcii aut unquam
postea fuit spiritualis persona prout predict'
R. per Narr' suam predict' superius suppon',
Et hoc parat' est verificare, Unde pet' judic'
si predict' R. Actionem suam predict' vers'
eum habere debeat, &c. Quer' moratur in
Lege, Et Def' jung' in morac', Vide 1 Lut.
138, 139.

Demurr'.

Observations.

And Page 140. the Reporter makes these
Observations upon the Statute, viz.

1. That if a meer Layman is presented, yet
it is not a meer Nullity, but he is Parson *de
Facto, &c.* Dyer 292. b.

2. That there are some Precedents in which
it is alledged, That the said Statute of 21 Hen. 8.
was made at the Parliament *inchoat'* or *tent'*
(which is all one) at *Westminster, &c.* And in
Bond and Tricket's Case it was so pleaded; and
therefore after Verdict for the Plaintiff, it was
moved in Arrest of Judgment, that the Statute
was misrecited because the Parliament com-
menc'd

If this Sta-
tute be mis-
recited.

menc'd at London, and so it was to have been pleaded, and thereupon *Cur advisare vult*. I have seen the Record of that Case (says the Reporter) between *Tricket* Plaintiff, and *Bond* Defendant, and there is a Demurrer in the Case to the Avowry of the Defendant; and because the Plaintiff did not appear at the Day given upon the *Cur advisare vult*, after the Demurrer the Plaintiff was nonsuited, so that much cannot be collected from that Case. But that in *Burt* and *Rothwell's* Case, in *C. B. intrat' Hill' 8 W. 3. rot. 1068.* this Point is determin'd; where in an Action on this Statute, after Verdict for the Plaintiff, it was moved in Arrest of Judgment, that the Statute was misrecited for the Cause aforesaid, and so was the Opinion of the whole Court upon due Consideration, and that the Plaintiff could not have Judgment, for that he had concluded *contra formam Statuti predict'*, where there was no such Statute, but it had been otherwise if he had concluded *contra formam Statuti in hujusmodi Casu, &c.* 3 *Keb.* 468. *Palmer* and *Taylor's* Case, & 847, & 848. And it was said by the Court, that the true and sure Pleading of this Statute was in *Coke's Entries.* See after.

How this Statute ought to be pleaded, and the Plea concluded.

Parliament prorogued.

He also further observes, That when a Statute is made at a Session of Parliament, held by Prorogation, the most brief and sure Way is to plead *Qd' ad Session' Parliamenti tent'*, such a Day and Year at such a Place. *Ford* and *Hunter's* Case, 2 *Cro.* III. 4 *Inst.* 27.

Parliament begun, adjourn'd, and prorogued.

' Vide *Co. Ent.* 203. b. Per quendam Actum edit' in prima Sessione Parliamenti prim' inchoat' in Civit' London tertio die Nov' Anno Regni invictissimi Principis Henrici nuper Regis Angl' octavi, vicesimo primo, &

‘ ex ea Civitate tam adjornat’ quam prorogat’
 ‘ ad Palatium Westm’ & ibm’ continuat’ per
 ‘ quadraginta & quatuor dies videlt’ usque de-
 ‘ cimum septimum diem Decembr’ & ab eisdem
 ‘ loco & die prorogat’ usque ad vicesimum
 ‘ sextum diem Aprilis tunc prox’ instan’ int’
 ‘ alia Inactitat fuit autoritate ejusdem Parlia-
 ‘ menti, Qd’, &c.

See Co. Ent. 511, 513, 514, pleaded *apud Westm’ in Com’ Midd’, &c.* See also *Rast. Ent. 599. b.*

Qd’ fuit Ca-
 pellanus Epif-
 copi.

¶ ‘ Debt sur Stat’ de Non residence quoad
 ‘ medietat’ forisfact’, Bar per General’ Pardon,
 ‘ Et quoad aliam medietat’, Bar qd’ fuit Capel-
 ‘ lanus Epi’ & Attendens in ejus Familia, Repl’
 ‘ qd’ non fuit Capellanus & Attendens, *Rast.*
 ‘ *Ent. 599.* Vide nichil debet per Patriam,
 ‘ *Rast. Ent. 414.*

Test A&c.]

‘ Bar to the Statute 25 Car. 2. (Appel’ le
 ‘ Test Act) *That he had taken the Oaths, &c.*
 ‘ Repl’ non, &c. Et Def’ demur’, Et judic’
 ‘ pro Def’, 1 *Lut.* 162.

Judgment in
 Premunire
 reversed for
 Default in
 the *Venire*.

Note, In a Writ of Error to reverse a Judg-
 ment in a *Premunire* given by the Justices of
 Assize and Gaol-delivery in the County of
 Somerset against *Perin*, for refusing to take
 the Oath of Obedience mention’d 3 *Jac. i.*
cap. 4. *Perin* pleaded *Non Cul’* to the Indict-
 ment, and the Issue was join’d between him
 and the Clerk of the Assizes, and the Award-
 ing of the *Venire Facias* was in this Manner
 upon the Record certified, *viz. Super quo pre-*
cept’ fuit Vic’ Com’ Somers’ predict’ qd’ Venire
Faciat’, &c. whereas it ought to have been
Preceptum est, and not *Preceptum fuit* in the Pre-
 terperfect

terperfect Tense, and for that Error Judgment was revers'd, *Mich. 23 Car. 2.* And for the same Fault a like Judgment in a *Premunire* against one *Dixon* was revers'd in *Trinity-Term* before. *Vide 2 Saund. 393.*

Debt upon the Stat' 5 Eliz. for using the Trade of a Tallow-Chandler, not being Apprentice to the Trade, Bar per Nil debet. Trade of a Tallow-Chandler.

§. 'ET predict' J. per R. N. Attorn' suum Nil debet & ven' & defend' vim & injur' qu', &c. Issue.
' Et dic' qd' ipse non debet prefat' Domino Regi & prefat' R. qui tam, &c. predict' 20 l. nec aliquem denar' inde in forma qua idem R. qui tam, &c. superius vers' eum narravit, Et de hoc pon' se super Patriam, Et predict' R. qui tam, &c. Similit, &c.
' Vide 1 *Lut. 164, 165.*

After a Verdict for the Plaintiff, it was moved in Arrest of Judgment, that the Action did not lie at *Westminster*, by reason of the Statute 21 *Jac. c. 4.* But the Case being of great Concern, it was order'd to be put into the Paper; and so it was. And it was argued the next Term after by Council on both Parts, and many Cases were cited by them. Three Justices being only present, they cited *Barns* and *Hayter's Case*, 1 *Sjd. 400.* *Dyer 236.* 3 *Cro. 737.* 2 *Keb. 401.* *Latch 192.* *Raymond 344.* 3 *Inst. 193.* *Stiles 209, 223, 353.* 4 *Inst. 65. 172.* And afterwards the Chief Justice and another were of Opinion for the Action, but the Third was strongly against it; and besides the Cases cited, they relied much upon the Case of *Nayler* and *Ash*, *Stiles 223.* But the Point was not absolutely

If the Action did lie at *Westminster.*

Bar in Debt

solutely resolved, for it was thought fit to be determined in the *Exchequer-Chamber*.

Indictment for using the Trade of a Woollen-Draper.

Privilege of
London plead-
ed.

Vide 1 Saund. 308, &c. where Kilderby was indicted at the Sessions for using the Trade of a *Woollen-Draper* at F. having never serv'd as an Apprentice to it. Defendant plead- ed the Privileges of the City of London, a Charter to sell their Merchandizes where they thought fit, &c. within the Kingdom of Eng- land, &c. But it was said, That the Charter being made long before the Statute of 5 Eliz. did not extend to the Point of using a Trade without being an Apprentice, but only to give Liberty to the Citizens and Freemen to sell their Merchandizes in any Place at their Plea- sures, and Judgment was given *pro Rege nisi*, &c. See for the Custom of London, where one that is educated in one Trade may use another. Cro. Car. 347, 361, 516, 517.

Illegal Ga-
ming.

*Debt upon the Statute 23 Hen. 8. cap. 9.
against illegal Gaming.*

Bar.

Non custo-
divit com-
munem Do-
mum pro lu-
cro, &c.

¶ ' **E**T predict' J. per R. R. Attorn' suum
' Ven' & Defend' vim & injur' qu', &c.
' Et dic' Actio non, &c. Quia protestando
' qd' non cognovit tal' Statutum prout predict'
' Quer' per Narr' suam predict' superius sup-
' pon' pro placito dic' qd' ipse Def' non custo-
' divit communem Domum ludendi ad Cartas
' lusorias, vocat' a *Carding-house*, & Ligeos
' dicti Domini Regis ibm' luden' ad Cartas
' lusorias

luforias per spacium 20 dierum nec aliquem earundem dierum pro lucro five advantage suo propr' permisit, prout predict' Quer' superius vers' eum narravit, Et de hoc, &c. Ideo, &c. Vide 1 Lut. 133, 134.

Indictment for keeping a common Tippling-House.

Vide 1 Saund. 249. One Faulkner was indicted at the Sessions in Southwark upon the Statute for keeping a common Tippling-House in the Borough, but the Indictment concluded, as at Common Law, *In contemptum dicti Domini Regis nunc Legumque suarum ac contra pacem dicti Domini Regis nunc Coronam & Dignitat' suas, &c.* and not *Contra formam Statuti*, it being made an Offence by the Statutes 5 & 6 Ed. 6. cap. 25. & 3 Car. 1. c. 3. and for that it ought to have concluded *Contra formam Statuti*; and the Court was of the same Opinion, and for that Exception the Judgment was quashed.

Indictment quash'd for the ill Conclusion.

Note, By the Statute 33 H. 8. cap. 9. Placards were allowed to be granted for Gaming.

Placards.

And Liberty to Justices of the Peace to enter the Gaming-houses, and imprison the Persons 'till Security given. Also Head-Officers of Cities, Boroughs, &c. were to make Search under Penalty of 48 s. for Default.

Officers may enter Gaming-Houses, &c.

A Clause of Restraint, as to what Persons may play or game out of Christmas, &c.

Prosecutions by this Act are to be within a Year, and the Act to be proclaimed Quarterly.

Time of Prosecution.

A Reservation is therein for Gentlemens Servants to play with their Masters Licence.

Servants playing.

But

Licences void.

But by Statute 2 & 3 P. & M. All Licences to keep Houses or Places of unlawful Game shall be void.

Cheating at Cards.

Stat. 16 Car. 2. was enacted against cheating at Cards, Dice, or other Games.

Above 100 l. lost at one Meeting.

And gives a Remedy where one loses above 100 l. at one Meeting, and Forfeiture of Treble Value and Costs against the Winner; the Prosecution to be within a Year.

9 & 10 Ann. against Gaming, and 10 l. lost.

Another Statute was lately made against Gaming, viz. 9 & 10 Ann. and a Remedy given him that loses 10 l. Treble Value, with Costs; and if the Party will not sue, then one Moiety to the Informer, and the other to the Poor of the Parish.

Answer upon Oath.

Also the Party is to answer upon Oath, Bills for discovering the Sums of Money, or other Thing so won at Play; but the Party is to be indemnified upon Discovery and Repayment.

Forfeiture by such as cheat in Gaming.

A Forfeiture of Five Times the Value, by such as shall win by Fraud either in Playing or Betting above 10 l. at one Sitting, &c. with other Corporal Punishments.

Examination of suspected Persons.

A Clause for Justices to examine Persons suspected to live by Gaming, and for them to find Sureties.

Forfeiture if the Winner assaults the Loser.

There is also a Clause, That such Winner as shall assault the other Party, shall forfeit all his Goods, &c. and suffer Imprisonment for Two Years.

Liberty in the Queen's Palaces.

But by this Act Liberty is given for Gaming within Her Majesty's Palaces, so as such Playing be for Ready-Money only.

See more of this after.

For Precedents as to Gaming,

SEE 1 *Lut. Rep.* 484, &c. Debt by Roger Pope against Pope Esq; against John St. Leger Esq; for St. Leger in 107*l.* 10*s.* And Defendant pleads the Statute Debt. of 16 *Car. 2. cap. 7.* against excessive Gaming. See it also 5 *Mod. Rep.* fo. 1, 2, 3, &c.

See also 1 *Lut. Rep.* fo. 180. upon an *Indebitat' Assumpsit* by *Whitgrave vers' Chancey*, for 100*l.* won at *Passage*, &c. And Defendant pleads the Statute in Bar. *Whitgrave v. Chancey, sur Indebitat' Assumpsit.*

It seems an *Indebitat' Assumpsit* does not lie for Money won upon a Wager. Vide 5 *Mod.* fo. 13, &c. and 1 *Keb.* 216. *Indebitat' Assumpsit* lies not.

See 5 *Mod. Rep.* 170. Action upon the Case Upon a Bill against the Acceptor of a Bill of Exchange gi- of Exchange ven for Money won at Play. And the De- for Money fendant pleads the Statute in Bar. *Et Judic' won. pro Def'.*

D'Anvers & Thistlethwait, Hill. 20 & 21 *Car. 2.* Debt was brought for 100*l.* lost at *D'Anvers and Thistlethwait.* Gaming, there being lost at the same Time a Ring of 20*l.* Value, and it seems that Obligation was adjudged good.

Vide 2 *Levinz, Rep.* 94. *Edgebury vers' Rosindale*, upon Articles for a Race to be run for 100*l.* one Time, and 100*l.* at another, and a Horse-Race. one of them is only run. Vide 2 *Lev.* 44. adjudged within the Statute. *Edgebury vers' Rosindale upon a Horse-Race.*

Vide 2 *Mod.* 54. *inter Hill & Pheasant*, where Hill & Pheasant. 100*l.* was won at several appointed Meetings.

Also see 5 *Mod. Rep.* 351, &c. *Stanhope vers' Smith*, where 85*l.* was lost to one, and 40*l.* to another at one Sitting: But Judgment was given for the Plaintiff. *Stanhope vers' Smith.*

Where

Where a Consideration may be good, tho' the Game be unlawful. *Vide 2 Roll. Rep. 103. 1 Keb. 216. Mod. 549. Pl. 736. Vide Clifts Ent. 200, 201, &c.*

Baxter versus Woodward, for cheating at Cards.

Case against the Defendant for cheating the Plaintiff at Cards, at the Game of *Mountsant*; and Judgment for the Plaintiff. *Moors Rep. 776. nu. 1075. Baxter vers. Woodyard & Orbet.*

Declarations, &c. against Cheaters at Cards, &c.

For Declarations upon Actions for cheating at Cards: See *Thomps. Entries, fo. 26. 2 Browns Entries, fol. 120. Cro. Rep. Eliz. fol. 90. Harms against Bowden, Co. En. 8. Pl. 6. 1 Rol. Abr. 100. Pl. 9.*

Indictment and Pillory.

Upon an Indictment against false Gamesters, Defendant was adjudged to stand in the Pillory.

Indictment against a common Player.

Indictment against one for being a common Player at Cards, and defrauding the Plaintiff of 40 s. held good. *1 Keb. 652. Spencer and Hudson's Case.*

Judgment given for Money won at a Tavern.

See also *1 Lev. Ent. 53. Anonymus*, where one being cheated at a Tavern in London gave Judgment for the Money: And the Court ruled, that Execution should be stay'd till the Matter should be examined. And the Judges advised the Party to bring an Information in *B. R.* against the Cheater, and also against the Vintner.

Information thereon.

Precedents against Cheaters, &c.

For Precedents and Indictments against Cheats, and unlawful Gaming and Game-Houses, *vide Offic' Clerici Pacis, Poulton de Pace Regis & Regni*, and in *Boulton's Justice of the Peace.*

See more afterwards, Bar in Debt per Statute Ley.



Debt

Debt upon the Statute 23 H. 6. cap. 8. for ^{23 H. 6. A-}
exercising the Office of an Under-Sheriff ^{gainst an Un-}
for Two Years together. The Defendant ^{der-Sheriff.}
pleads in Abatement his Privilege as an
Attorney of C. B. to be sued by Bill.

¶ **E**T predict' S. in propr' persona sua ^{Bar per Pri-}
 ven' & defend' vim & injur', Et dic' ^{vilege ut Ar-}
 qd' ipse ad Breve Original' predict' J. respon- ^{torn.}
 dere compelli non debet, Quia dic' qd' ipse
 est & die impetration' Brevis Original' pred'
 & diu ante fuit un' Attorn' Dom' Regis &
 Domine Regine de Banco hic, qd'q; in eadem
 Cur' habetur & existit & a tempore cujus
 contr' Memoria hominum non existit habe-
 batur & fuit talis Consuetudo hic usitat' & ap-
 probat' videlt', Qd' nullus Attorn' ejusdem
 Cur' ad respond' alicui in aliqua Actione per-
 sonal' in Cur' hic super Breve Original' im-
 petrat' seu aliter nisi per Billam tantum ver-
 sus hujusmodi Attorn' Justic' hic exhibit' con-
 tra voluntatem suam compelleretur, Et idem
 S. ulterius dic' qd' ipse tract' est in placitum
 in Cur' hic per Breve Original' predict' ad
 respond' p'fat' J. B. de predict' placito debiti
 contra voluntat' suam & consuetud' predict',
 Et hoc parat' est verificare, Unde ex quo
 idem S. un' Attorn' Cur' hic existit & die
 impetrat' Brevis Original' predict' & antea
 fuit, ipse pet' privileg' suum predict' sibi adju-
 dicari, Et qd' ipse ad Breve Original' predict'
 non respondeat, &c.

Defendant demurs generally, and demands ^{Quer'demur.}
 Judgment for the said Debt, 'Et hoc parat' est
 verificare, Unde pro defectu sufficien' pla-
 citi

‘citi predict’ S. in hac parte idem J. qui tam,
 ‘&c. per’ judic’ & debitum predict’ dictis
 ‘Domino Regi & Domine Regine & eidem
 ‘J. B. qui tam, &c. adjudicari, &c.

Def’ jung’
 in morac’.

Defendant joins in Demurrer, and demands
 Judgment that the Plaintiff may be barr’d,
 ‘Et qd’ predict’ J. qui tam, &c. Ab Actione
 ‘sua predict’ habend’ precludatur, &c. Vide
 ‘1 *Lut.* 195, 196.

Difference
 where the
 Suit is for
 the King, and
 where for the
 King and the
 Party.

Note, This Case is reported 3 *Lev.* 398.
 and it is there said to be twice argued; and it
 was then said for the Plaintiff, That this being
 the Suit of the King, an Attorney had no Pri-
 vilege against him, but he might sue in what
 Court, and in what Manner he pleased, 9 *H.6.*
 44. *Roll. Privilege* 244. *Rast. Ent.* 206. upon
 the said Statute. To which it was answer’d
 and resolv’d by the Court, That so it is where
 the Suit is the Suit of the King, as upon In-
 dictments, Informations, and Actions for the
 King alone: But here, although the King is to
 have Part of the Money recovered, yet it is
 the Suit of the Party, although for the King
 and himself. And in this Suit the Party may
 be nonsuited, he may have Tales without War-
 rant by the Attorney General; but where the
 King only has the Suit, he cannot be non-
 suited, nor can any Tales be without the At-
 torney-General’s Warrant, as in 4 *Leon.* 46.
 Whereupon Judgment was, that the Writ
 should abate: Thus far the Report of Serjeant
Levinz. But Serjeant *Lutwyche*, fo. 196. taking
 Notice of this Report, directs that for Autho-
 rites to prove that the Suit is the Suit of the In-
 former, which are not mentioned by the other.
Vide Gro. Car. 10. and *Hutton* 82. *Farrington’s*
Case, 3 *Inst.* 194. *Mo.* 541. 1 *Leon.* 119. *Stret-*

ton and Taylor's Case. Cro. Eliz. 138. Hammond and Griffin's Case. Mo. 564. Agar and Candish's Case.

As to the Demurrer, and Joinder in Demurrer, as if the Plea of the Defendant had been a Plea in Bar, which, as it seems, ought not to have been, he refers to the Case of *Putt and Nosworthy*, 1 Ven. 135, 136, 137. Where you may observe it was agreed, That if a Man concludes a Plea in Abatement as in Bar, if it be against him that pleads it, Judgment peremptory is to be given. So if a Man begins a Plea in Abatement, *Actionem non*, &c. Judgment peremptory ought to be thereupon given. 1 Ven. 136. Vide 17 Aley's Rep. *Shalmer vers' Slingsby*.

As to the Demurrer, &c.

Where Judgment peremptory ought to be.

Serjeant *Lutwyche* further observes, That by the Statute 23 H. 6. Persons inheritable to the Office of Sheriff at the Time of making of the said Act, and also such Persons who had Freehold in the Office of Sheriff at the Time of making the said Act, and their Under-Sheriff and Clerks, are excepted out of the said Act. And in the Declaration it is averr'd, That the Defendant never had any Estate of Freehold, or any other Estate in the said Office of Under-Sheriff; which is to no Purpose: For the Exception as to this Matter extends only to the Office of Sheriff, and not to the Office of Under-Sheriff; for if the Sheriff himself had Freehold in his Office, the Under-Sheriff is excepted as his inferior Officer. But (says he) *Quære*, If there needs any such Averment? For it cannot be easily presumed, that the Estate of Freehold which was in Being at the Time of the making of the said Act, 23 H. 6. had Continuance to this Day.

Persons, &c. excepted out of the Act.

So their Inferior Officers.

Q.

N

It

It may not be improper here to add a Case of Privilege pleaded by an Attorney, as in 2 Lut. 1664, &c.

Bar per Attorney per Privilege.

The Declaration was upon a Bond made to a Woman when Sole. The Defendant pleads Privilege as an Attorney of the Common Pleas. The Plaintiff replies, That for Five Years before the Original, the Defendant had not prosecuted or defended any Cause, but for that Time had withdrawn himself from the Exercise of his Office of an Attorney. Plaintiff joins as to Plea in Abatement of the Writ.

Repl^t that he had left off his Practice.

‘ Et predict^r L. & E. dicunt qd’ ipsi per aliqua per predict^r T. preallegat^r a Respon-
sione ad Breve suum predict^r habend^r repelli
non debent, Quia dic^r qd’ predict^r T. die
impetrac^r predict^r Brevis Original^r ipsorum L.
& E. scilicet 3 die Jan. Anno Regni Domine
Reg^r nunc secundo seu per spacium diversorum
Annorum videlicet, Quinque annorum
ante diem ill^r non prosecut^r fuit vel Defend^r
aliquod negocium alicujus persone ut Attorn^r
Cur^r hic sed ab exercitio Officii sui ut Attorn^r
Cur^r hic per diversos annos ante diem impe-
trac^r Brevis Original^r predict^r videlicet per to-
tum tempus predict^r se totalit^r subtraxit & re-
cessit, Et hoc parat^r sunt verificare, Unde
pet^r judicium, Et qd’ predict^r Thomas
ad Breve predict^r respond^r, &c. Defend^r
demurs.

Defendant demurs.

Plea allowed good, he being an Attorney on Record.

After several Exceptions to the Plea by the Plaintiff’s Council, the Opinion of the Court was, That the Plea *Prima facie* was good, and that it was not avoided by the Replication; for as long as he remain’d Attorney on Record, he ought

ought to have Privilege of an Attorney; and if he was unfit to continue an Attorney of the Court, the Court ought to have been moved to put him out of the Roll.

Another Exception was, That the Custom of the Attorneys was not well alledged in the Plea, as, *Qd' nullus Attornatus compelleretur ad respond', &c.* where it ought to be also, *Nec a tempore quo, &c. compelli consuevit,* which was rather a Custom *in fieri* than *in facto*. The Court said, they took Cognizance of the Privilege of the Attorney of the Court, and therefore it need not be so precisely alledged as other Customs: And Judgment was given *pro Def'*, 2 Lut. 1667. Vide 2 Lut. 1592. It was there said by the Court, That upon a Demurrer to a Plea in Abatement, the Defects of the Declaration may not be examined. How the Custom of Attorneys ought to be alledged. Defects not examinable.

§. Debt upon the Statute 1 H. 5. ' *Qd' Milites Com' pro Parlamento non forent electi nisi sunt commoran' in Com' & 8 H. 6. Qd' liberi Tenen' ad Milites Parliamenti eligend' acetiam Milit' electi forent commoran' infra Com' ubi electio est, Et si Vic' retorn' alia forma forisfac' 100 l. & 23 H. 6. les Burges Parliament' forent commoran' in eisdem Burgis & Civitat', &c. Et qd' A. P. mil' fuit elect' pro un' Mil' Com' S. & retorn' per Vic' S. Et fuit commoran' in Com' Devon & non in Com' Som'.* Elections of Parliament-Men.

Bar per Residenc' apud H. in Com' S. &c.

§. ' **E**T predict' J. Syd. per J. P. Attorn' *saum ven' & defend' vim & injur' quando, &c. Et dic' qd' predict' J. Sto. Actionem, suam predict' vers' eum habere* Bar per Residence.

Traverse.

Repl' al Re-
sidence &
Issue.

Return.

Pur faux
Retorn.

Nil debet.

' non debet, Quia dic' qd' predict' A. P. pre-
' dicto 13 Febr' Anno Regni dicte Domine
' Regine nunc 13. supradicto fuit inhabitans
' & residens apud H. sancti G. in predict' Com'
' S. Absq; hoc qd' predict' A. P. predict' 13
' die Febr' Anno Reg' dicte Dom' Regine nunc
' 13. supradicto fuit inhabitans & residens apud
' S. P. predict' in predict' Com' D. prout pre-
' dict' J. Sto. per Narr' suam predict' superius
' suppon', Et hoc, &c. Unde si, &c.

' Precludi non, quia ut prius dic' qd' pred'
' A. P. predicto 13 die Febr' Anno Regni
' dicte Domine Regine nunc 13. supradicto fuit
' inhabitans & residens apud S. P. predict' in
' predict' Com' D. prout per Narr' suam pred'
' superius suppon', Et hoc pet' qd' inquiretur
' per Patriam, &c. Vide *Rob. Ent.* 415, 418.

§. Debt upon the Statut' 23 H. 6. for not re-
turning the Plaintiff a Knight of the Parlia-
ment, being elected. Bar, That the Plaintiff
was not elected by the greater Number, *Et*
Issue. Vide *Aston' Ent.* 72, 76, 91, 92, &c.
Rast. Ent. 447.

§. ' Action sur Act' de 7 Will. 3. pur faux
' Retorn' d'un Burgefs de Parliament' & Bar
' al ceo per eund' Statut'. Vide 1 *Lut.* 184.

*Sedgwicke vers' Richardson, for selling
a Horse against the Statute.*

§. **A**N Action of Debt against a Horse-
Courser for selling a Horse in *Smith-*
field contrary to the Statute of 31 *Eliz.* cap. 12.
Bar per nil debet, Et Issue sur ceo, 1 Lut. 197,
& 200. Where 'tis observ'd, that this Case is
reported in 3 *Levinz.* 374. and in such Manner,
that

that Judgment was given for the Plaintiff with Costs: Where the Defendant's Council alledg'd that no Costs ought to be given in such Case for the Plaintiff; but that the Plaintiff's Council replied, That when the Penalty is certain, Damages and Costs ought to be given, but not when the Penalty is uncertain, &c. After Serjeant *Lutwyche* has taken Notice of some Mistakes in that Report, &c. he mentions the Case of *Eaton and Buntley*, 2 *Keb.* 781, & 788. And reported in 1 *Vent.* 133, & 134. where it was resolved by the Court, That Costs ought not to be given in an Action popular, whether the Forfeiture be certain or not; but where a certain Penalty is given to the Party grieved, there he shall have his Costs and Damages. *Vide* 1 *Brownl.* 66. *King and Law's Cases*, and *Hut.* 22. That it is true, that in an Action upon the Statute of 8 *H. 6.* of Forcible Entries, the Plaintiff shall recover Costs; but the Reason of it is, because it is not Law of Creation, but of Addition, for by the Common Law the Plaintiff would recover Damages, 10 *Co.* 116. *Pilford's Case*. The Reporter adds, That in this principal Case of *Sedgwick and Richardson*, he always took it (till the Report of 3 *Levinz*) that the Rule of Court was, That no Costs were to be given in the Case; that he had view'd the Record enter'd *Mich. 5 W. & M. Rot.* 400. and not *Trin. 5 W. & M.* as in *Levinz*, but that no Judgment is entred on the Roll, nor is there any Footsteps of the Case, in Point of Costs, to be found by the Remembrance or the Court-Book; but that he had better Satisfaction from the Defendant himself, who did inform him that he had only paid the Penalty, viz. the 10 *l.* in Discharge of the Suit against him. *Vide* 1 *Lut.* 201. *Lutwyche Solement Accounsel ove le Def.*

If the Plaintiff in a popular Action shall have Costs.

It seems no Costs.

For Recusancy.

Bar by a former Conviction.

§. Debt by *Qui tam*, &c. for Recusancy in not coming to Church, and Forfeiture of 120*l.* to be divided into Three Parts, &c. Bar by a former Conviction upon an Indictment at the Sessions of Peace by Proclamation, &c. reciting the Stat. 28 *Eliz.* commonly call'd 29 *Eliz.* (*vide* 1 *And.* 295.) with several Sentences, some observ'd to be in the Rolls of Parliament, and some not; that the Defendant was indicted at the Sessions of Peace; that Proclamation was made, &c. that the next Sessions was held 7 *Octobr.* 3 *W. & M.* that the Defendant before that Sessions did not surrender himself to the Sheriff, nor appear'd at the said Sessions, and his Default was recorded, and the said Conviction certified into the *Exchequer*, with Averments of the Conviction being in Force, and of the Identity of the Person. Plaintiff demurs, and Defendant joins in the Demurrer.

Demur'.

Vide 1 *Lut.* 201, & 208. Where 'tis observ'd, That the Roll of the Parliament was searched upon the Occasion of this Case; and that it was so as is observed in the Margin; and that after the Joinder in Demurrer, there were no other Proceedings in the Case.

Conviction a Bar to an Informer.

That a Conviction by Proclamation is a Bar to an Informer. *Vide* *Bridgm.* 120. 2 *Cro.* 481. *Lane* 60. *Noy* 117. 11 *Rep.* 65, 66. *Crawley de Recusants* 78, & 79.

§. Vide

ff. Vide 1 Lut. 208, &c. The like Action of Debt upon the said Statutes, the Defendant pleads a Judgment against him in another Action, brought by another Informer. The Plaintiff replies, That the Original Writ of the said Informer was not brought within Twelve Months after the said Eleven Months. Simile & Bar by a former Judgment.

‘ Repl’, Et predict’ J. qui tam, &c. dic’ qd’ ipse per aliqua preallegat’ ab Actione sua predict’ inde vers’ eandem Eliz. habend’ precludi non debet quia protestando qd’ judic’ predict’ habit’ & obtent’ fuit per predict’ W. V. vers’ eandem E. per fraudem & covinam int’ eos prehabuit ea intentione ad predict’ J. in premissis defraudand’, pro placito idem J. qui tam, &c. in facto dic’ qd’ predict’ Original’ Breve ipsius W. V. in forma predict’ prosecut’ non prosecut’ fuit infra unum Annum prox’ postquam predict’ undecim menses in eodem placito mentionat’ incept’ fuer’, Et sic judicium predict’ virtute cujusdam Statuti in hujusmodi Casu nuper edit’ & provis’ vacuum in Lege existit, Et hoc idem J. qui tam, &c. parat’ est verificare, Unde tam pro Domino Rege nunc quam pro seipso pet’ judicium & debitum predict’ in Narr’ predict’ menc’ tam Domino Regi nunc quam predict’ J. qui tam, &c. sibi adjudicari, &c. Repl’ & Protestando, &c. Pro placito, that the Original was not brought within Twelve Months.

‘ Et predict’ E. dic’ qd’ predict’ Breve Original’ predict’ W. emanavit infra tempus in ea parte limitat’, Ac prout ill’ emanasse debuit, Et hoc parat’ est verificare, Unde ut prius pet’ judic’, Et qd’ predict’ J. qui tam, &c. ab Actione sua predict’ vers’ eam Rejo’, That the Original issued out in due Time.

' habend' precludatur, &c. Quer' demur', Et
' Def' jung' in morac', 1 *Lut.* 211.

Exception to
the Conclu-
sion of the
Narr'.

The sole Question which was debated in the Case was, Whether the Declaration was good? And Two Exceptions were taken to it; First, That it concluded *Contra formam Statuti*, whereas it ought to be *Contra formam Statutorum*, because the Action is founded upon several Statutes, and refers to 3 *Cro.* 750. *Dingley* and *Moor's Case*, 2 *Cro.* 142. *Broughton* and *Moor's Case*, in Point. To this it was answer'd, That the Precedents are as the Declaration is here, *Hern* 509. *Co. Ent.* 569. *b. Winch* 522, 523, 524, 526, 527, & 660. 1 *Brownl.* 135.

Exception,
That the
Declaration
was too gene-
ral.

Another Exception was, That the Declaration was too general, and not according to the Precedents, by which it is shewn how the 20 *l. per Mensem* is forfeited, *viz.* so much to the King, so much to the Informer, and so much to the Poor. But to that it was answer'd, That the Precedents are both Ways, and the Court will take Notice how the Forfeiture is to be distributed.

*Sed non al-
locatur.*

Note, The Reporter observes this Case was twice argued, *Et Cur' advisare vult*, and that he could not by any Means discover what Event it had.

How the
Declaration
ought to
conclude.

But the Case of *West*, in *Owen* 135. seems (as he says) to be a strong Case, that the Declaration ought to conclude *Contra formam Statutorum*. He adds, that he caused the Court-Book and the Remembrance to be seached, and by them it appears not that any Judgment was ever given in the Case; and that he had

so often lost his Labour in searching the Rolls of the Court, that he was discouraged to search if any Judgment was enter'd on the Roll. *Vide Lut. 212.*

Upon rescuing a Distress of Corn.

Note, Upon an Action upon the Statute of Notice, when 2 *W. & M.* for rescuing a Distress of not necessary. Corn taken for Rent, after Verdict for the Plaintiff, upon Motion in Arrest of Judgment, it was said and resolv'd, That forasmuch as the Defendants were Trespassers, no Notice of the Distress was necessary to be given to them; for the Intent of the Act is, That the Owner of the Goods distrain'd, should have Notice to bring his *Replevin*.

2. That Corn thrash'd or unthrash'd may well be distrain'd.

3. That a Lease for a Year, *Et sic de anno* Lease from *in annum qui diu ambabus partibus placuerit*, is a Year to Year, good Lease for Two Years at the least, *secundum* &c. *6 Co. 35. b. 3 Cro. 775. 1 Syd. 427. & 1 Mod. Rep. 3.*

That this Action is founded upon a Tort, and not upon the Right of the Land; and the Demise, &c. is only an Inducement to the Action, and the Tort is the principal Matter; and therefore the *Venue* shall be laid where the Tort is done, according to 3 *Cro. Sidenham versus Robins*, Noy 9. *Banning's Case*, 3 *Cro. 427*, & 571. *Hob. 305. & Hutt. 39.* And Judgment was given for the Plaintiff. *Vide 1 Lut. 213, &c.*

Action, where to be laid.

J. Debt

ss. Debt against the King's Treasurer for Monies due to the King, received of the Plaintiff, and not paid, &c. grounded on Statute 7 E. 6. Demurrer & Bar al' Narr'.

Protestando
Nar', &c. mi-
nus suffici-
end'.

Pro placito
non recepit
contra for-
mam Statuti.

Venire Fac'.

Verdict & Ju-
dic' pro Def'.

‘ Et super hoc idem R. M. protestando dic’,
‘ Qd’ Declaratio predict’ ac materia in eadem
‘ content’ minus sufficien’ in Lege existit ad
‘ quas ipse necesse non habet nec per Legem
‘ terre tenetur respondere, Pro placito tamen
‘ idem R. dic’ qd’ predict’ T. S. Action’
‘ suam predict’ inde vers’ eum habere seu ma-
‘ nutenere non debet, Quia dic’ qd’ ipse non
‘ cepit vel recepit predict’ 4s. 4d. contra for-
‘ mam Statuti predict’ modo & forma prout
‘ predict’ T. S. per Breve & Declarationem
‘ suam predict’ superius versus eum narravit,
‘ Et de hoc pon’ se super Patriam, Et predict’
‘ T. S. similiter, Ideo fiat inde Jurat’, Et quia
‘ predict’ Villa de C. est infra Com’ G. in Wal-
‘ lia, Ubi aliquis Vic’ hujus Regni Angl’ se in-
‘ tromittere non potest, Ideo precept’ est Vic’
‘ Com’ H. Qd’ Venire Fac’ hic a die Pasch’
‘ in quindecim dies xii. &c. de Vicin’ de L. in
‘ dicto Com’ H. que est Vicin’ prox’ adjacen’
‘ predict’ vill’ de C. quorum quilibet, &c. per
‘ quos, &c. Et qui nec, &c. Ad recogn’, &c.
‘ Et idem dies dat’ est partibus predict’ hic, &c.
‘ Vide *Ast. Ent.* 97, 99, & 101. Verdict’ pro
‘ Quer’, Garrant Att’ pro Quer’, Attorn’ pet’
‘ judic’, Cur’ advisare vult, Et videtur qd’ Nar’
‘ est insufficiens, Et ideo Judic’ pro Def’, si-
‘ mile, *Rast. Ent.* 191, 192.

Debt upon the first Branch of the Statute of Maintenance, 32 Hen. 8. cap. 9. for Maintenance. entring upon the Plaintiff's Lands, and making a Lease thereof, &c. Def' protestando Quer' non seit' fuit infra unum Annum pro placito non debet per Patriam.

ff. 'ET predict' W. per J. B. Attorn' suum ven' & defend' vim & injur' quando, &c. Et quicquid, &c. Et protestando qd' predict' T. qui tam, &c. prefat' 22 die Julii Anno Regni Domine Regine nunc 30. supra dicto & per unum Ann' tunc ult' preterit' non fuit seit' de tenementis predict' cum pertin' in Dominico suo ut de Feodo prout predict' T. qui tam, &c. per Narr' suam predict' superius suppon' pro placito dic' qd' ipse non debet dicte Domine Regine & prefat' T. qui tam, &c. predict' 200 l. nec aliquem denar' inde in forma qua predict' T. qui tam, &c. superius vers' eum narravit, Et de hoc pon' se super Patriam, Et predict' T. qui tam, &c. similit', Ideo precept' est Vic', &c. Vide Rast. Ent. 430.

Bar per Nil debet & Issue.

Debt

Debt

Simile.

*Debt upon the said Statute by Bill in Bank
le Roy. Bar, That he was made Attor-
ney by Deed, and therefore retain'd ano-
ther Attorney, and traverses the Mainte-
nance.*

Bar qd' Def'
fuit Attorn'
per Lram'
Attorn'.

Qd' Def' re-
tinuit alium
Attorn'.

*A*ction' non, quia dic' qd' ante tem-
pus predict' in quo manutenencia &
sustentatio superius fieri supponitur videlt' 10
die O. Anno, &c. predict' W. P. per no-
men' W. P. de C. in Com' H. Gen. apud
C. predict' in Com' H. per quoddam scrip-
tum suum sigillo ipsius W. sigillat' Curieque
Regis hic ostens' cujus dat' est die & Anno
supradicto attornavit deputavit & loco suo
posuit predict' R. M. ad prosequend' attachi-
and' & arrestand' in nomine pred' W. pred'
J. W. pro 66^l. bone & legalis Monete Angl',
In qua quidem summa predict' J. W. adtunc
obligat' existerat & indebitat' fuit eidem W.
per quandam Billam manu predict' J. sub-
script' & sigillat', Et ulterius adtunc & ibm'
per predict' scriptum Attornat' idem W. de-
dit prefat' R. plenam potestat' & vim ad eli-
gend' & faciend' aliquem Attorn' pro pre-
dict' W. in quacunque, Curia vel Lege idem
R. prosecut' fuit pro predict' debito pro-
ut per idem scriptum Attorn' manifeste li-
quet & apparet, Quorum premiss' pretextu
idem R. predict' die & Anno in Narr' pre-
dict' Quer' spec' apud H. predict' nomine
predict' W. cum pecuniis dicti W. retinuit
J. S. pro Attorn' ipsius W. ad prosequend'
predict' Action' debit' vers' predict' J. W.
usq; ad finem ejusdem placiti, Absque hoc qd'
pre.

'predict' Def' manutenuit vel sustentavit placitum predict' modo & forma, &c. Et hoc, &c. Vide *Rast. Ent. 430. a.*

Bar, That he was made Attorney to J. by Simile & Bar. Deed, and he retain'd an Attorney with the Money of J. *que est eadem manutenencia. Idem Rast. 429. b.*

§. Defendant *protestando*, That the Bill is Bar by War' insufficient. Bar, That the Defendant was Attorn'. Attorney at Law, and by Warrant inrolled in the Cause, &c. *Rast. Ent. 431. b.*

§. Two Defendants plead *Non Cul'*. Bar Bar per Re- by the Third, That he is an Attorney at Law, tainer ut and retain'd by the said W. *per quod, &c. que Attorn'. est eadem manutenencia, &c.*

'Repl', Qd' Def' dedit un' Jur' 6 s. 8 d. de denar' Def' propr' pro veredicto dand', &c.

'Rejo', Et Exit' inde, Et Verdict' pro Quer', Mis' & dampn' per Jur', Et Cur' advisare vult. *Rast. Ent. 431. b.*

§. Defendant pleads, that he is a Councillor Simile per at Law, belonging to *Lincolns-Inn*, and was re- Retainer ut tain'd as Council in the Case. *Repl', Qd' fuit Consil. homo Laicus & non Conciliarius, Et Issue inde. Rast. 432.*

Several Bars in Maintenance.

§. 'NON Cul' sur Stat' de Maintenance, Anno 1 R. 2. cap. 4. *Rast. 428. a.*

§. 'Bar per nul tiel Record, Et Issue sur ceo. *Ibid.*

§. Bar

As Surety.

§. *Bar que il fuit Suretie pur le Obligor, Et that he desired one to be an Attorney for the Obligor, &c. to sue the Executors. Idem ibid.*

As Servant,
&c.

§. *Bar, That T. was his Servant, and he requir'd one to be of his Council. Repl', That the Defendant retain'd Council of his own proper Money, and gave of his own Money to one of the Jurors. Rejoinder, Non Cul' de maintenanc' in Repl', Et Issue sur ceo. Idem 429.*

As a Cousin.

§. *Bar, Non Cul' per un'. And the other pleads he was Cousin to R. and pray'd one to be of the Council of R. and gave him Money of the Money of R. que est eadem Manutenencia, &c.*

Repl', he gave
his own Mo-
ney.

Repl', That he gave of his own proper Money to the Jurors. Rejo', And Issue thereon, *Rast. 429. a. Simile 429. b.* Repl', That the Defendant gave of his own proper Money to T. and J. to aid, &c. and Issue thereon.

§. ' *Quando, &c. Et dic' qd' ipse non manutenuit & sustentavit querelam Information predict' pro parte predict' A. contra formam Statut' predict' prout predict' W. superius vers' eum narravit, Et de hoc pon' se super Patriam, Et predict' W. qui, &c. similiter, Ideo, &c. Vide Coke's Ent 163. a.*

Narr', for a
fraudulent
Sale of Goods
to prevent
the Plaintiff's
Execution.

§. *Debt for 400 l. upon the Statute of fraudulent Deeds, 13 Eliz. cap. 5. That a Stranger being indebted to the Plaintiff, upon a penal Bill gave all his Goods fraudulently to the Defendant, and sets forth the Goods, That the Defendant fraudulently accepted the Gift, and sold the said Goods to Persons unknown, who conveyed them into other Counties, &c. That the Plaintiff had formerly brought an Action against the Stranger upon his Bill in B. R. and the Stranger confessed the Action, and Judgment*

ment for the Plaintiff, and an *Elegit* sued forth; but the Plaintiff was defrauded of his Execution by reason of the said fraudulent Sale by the Defendant.

Bar, That the Stranger did not give or grant the said Goods contra formam Statuti, &c. as follows:

¶ *E*T modo, &c. Et idem W. defend' Bar inde.
 ' vim & injur' quando, &c. Et dic'
 ' qd' predict' E. qui tam pro Domina Regina
 ' quam pro seipso sequitur Action' suam pre-
 ' dict' inde vers' eum habere seu manutenere
 ' non debet, Quia dic' qd' predict' T. W. non
 ' dedit nec concessit eidem W. G. bona & ca-
 ' talla predict' in Narr' predict' superius spec'
 ' contra formam Statuti predict' modo & for-
 ' ma prout pred' E. superius vers' eum queritur,
 ' Et de hoc pon' se super Patriam, Et predict'
 ' E. similic', &c. Ideo ven' inde Jur', &c. Ver-
 ' dict' pro Quer', &c. — Ideo cons' est, &c. Verdict pro
 ' That the Plaintiff recover the Forfeiture and Quer'.
 ' Damages, &c. Et ulterius cons' est qd' pre- Judgment,
 ' dict' W. habeat imprisonament' per dimid' how.
 ' unius Anni absq; ballio vel manucaptione
 ' juxta formam Statut' predict', Et predict'
 ' W. G. capiatur, &c. Vide Co. Ent. 163.

Debt

Mortuaries. Debt sur Stat' de Mortuaries, 21 H. 8. cap. 6. *And that the Defendant took for a Mortuary where the Party had not Goods to the Value of Ten Marks.*

Bar qd' non cepit predict' 40 d. contra formam Statut'.

Judic' pro Quer'.

THE Defendant protesting, That the Party had Goods above the Value, &c. 'Protestandoque etiam, *That the Count is insufficient, pro placito dic' qd' predict' J. C. non cepit de pefat' A. dum ipsa sola fuit pro mortuar' predict' W. F. nuper viri ipsius A. predict' 40 d. in narratione predict' spec' contra formam Statut' predict' modo & forma pro. ut in eadem Narr' vers' eum superius supponitur, Et de hoc pon' se super Patriam, Et predict' C. & A. similit', &c. Ideo ven' inde Jur', &c. Veredict' & Judic' pro Quer'. Vide Co. Ent. 164.*

Escheator Inquest.

Debt upon the Statut' 8 H. 6. cap. 16. against an Escheator for taking an Inquest, which was not retorn'd to him by the Sheriff. Bar, That it was return'd by the Sheriff.

Bar inde.

¶ 'ET predict' R. M. dic' Action' non, 'Quia dic' qd' pred' J. H. (&c.) ante caption' Inquisition' ill' fuer' impanellat' & retornat' per predict' R. S. coram pefat' R. M. predict' 12 die O. apud D. predict' ad inquirend' de premifs' secundm' formam Ordination' predict' Et de hoc pon' se super Patriam, Et predict' J. similit', &c. Vide *Rast. Ent. 315. b.*

ff. ' Nil debet per Patriam in debito sur Extortion.
' Statute de probate de Testaments, 21 H. 8.
' cap. 5. pur Extortion contra Statut'. *Vide Cc.*
' Ent. 167. b.

' Vide Judgment pur le Plaintiff sur Stat' Perjury.
' 5 Eliz. de Perjury, *Ast. Ent.* 101.
' Judgment vers' Prosecutor in le Court de Admiralty.
' Admiralty con' Stat' 13 R. 2. 5. *confirmed by*
' 2 H. 4. 11. *Idem* 102.
' *Judic'* pur Plaintiff upon the Stat. 8 H. 6. for
forcible Entry. *Ibid.*
' *Judic'* pur Plaintiff upon the Statute of Cham-
perty. *Idem* 103. *Et vide Rast. Ent.* 119. b.

Bar in Debt per Durefs & Minas, &c.

Bar per Durefs.

ff. ' **E**T predict' B. per J. J. Attorn' suum Bar per Im-
' ven', &c. Et dic' qd' ipse de debito prisionment
' predict' virtute scripti predict' onerari non de Covina
' debet quia dic' qd' ipse tempore confection' quousque, &c.
' script' predict' fuit imprisonat' per predict'
' W. & alios de eorum covina apud W. pre-
' dict' (vel apud C. in Com' S.) & ibidem in
' Prisiona detent' quousq; ipse per vim & duri-
' tiam & coercionem imprisonament' ill' scrip-
' tum illud pefat' W. tunc ibidem fecit, Et
' hoc parat' est verificare, Unde pet' Judic'
' si ipse de debito predict' virtute script' pre-
' dict' onerari debeat, &c.

Repl', qd'
fuit ad lar-
gum.

‘ Et predict' W. & J. dic' qd' ipsi per ali-
‘ qua preallegat' ab Actione sua predict' ha-
‘ bend' precludi non debent, quia dic' qd'
‘ predict' B. tempore confectiō' scripti pre-
‘ dict' fuit sui juris ad largum extra quamlibet
‘ prisonam & scriptum illud ex mera & spon-
‘ tanea voluntate sua eisdem W. & J. fecit &
‘ non per vim & duriciam Imprisonamenti
‘ prout predict' B. superius allegavit, Et hoc
‘ pet' qd' inquiretur per Patriam, Et predict'
‘ B. similiter, Ideo xii. &c. Vide *Rast. Ent.* 250.

Aliter post Oyer del Obl' per Action non.

Oyer.

Bar ut supra.

ss. ‘ **E**T predict' J. R. & W. T. per E. E.
‘ Attorn' suum ven' & defend' vim
‘ & injur' quando, &c. Et pet' auditum script'
‘ Obl' predict', Et eis legitur in hec verba,
‘ Noverint, &c. pet' etiam auditum Condition'
‘ ejusdem script' & eis legitur in hec verba,
‘ *The Condition*, &c. Quibus lectis & auditis
‘ iidem J. & W. dic' qd' pred' R. & E. Action'
‘ suam pred' inde versus eos habere seu manute-
‘ nere non debent quia dic' qd' predict' J. R.
‘ tempore confectiō' scripti Obl' ill' predict'
‘ fuit imprisonat' per predict' R. & E. & alios
‘ de Covina sua videlt' apud C. in Com' E.
‘ & ibidem in Prisoa detent' quousq; iidem
‘ J. & predict' W. T. per vim & duritiem
‘ Imprisonament' scriptum illud prefat' R. &
‘ E. adtunc & ibidem fec', Et hoc, (&c.) Unde
‘ pet' judic' si predict' R. & E. Action' suam
‘ predict' inde versus eos habere seu manute-
‘ nere debeant, &c. Vide 2 *Browns Ent.* 99.
‘ Vide *Bro. Vad.* 214. Per Action' non, &c.
‘ *Bro. Red.* 200.

Aliter

Aliter per onerari non Debet.

§. ' **E**T modo, &c. Et dic' qd' ipse de debito predict' virtute script' predict' onerari non debet quia dic' qd' ipse tempore confection' scripti predict' fuit imprisonat' per predict' A. & al' de Covina sua videlicet apud B. in Com' predict', Et ibid'm in Prisona detent' quousq; idem C. per vim & duritiam Imprisonament' ill' script' illud prefat' A. adtunc & ibid'm fecit sigillavit & ut factum suum eidem A. deliberavit, Et hoc, (&c.) Unde pet' judic' si ipse de debito predict' virtute script' Obl' pred' onerari debeat, &c.

Bar.

' Precludi non, quia dic' qd' predict' C. tempore confection' scripti predict' fuit sui juris ad largum & extra quamlibet Prisonam, Et scriptum illud ex mera & spontanea voluntate sua eidem A. fecit sigillavit, Et ut factum suum deliberavit & non per vim & duriciam Imprisonamenti prout predict' C. superius placitando allegavit, Et hoc pet' qd' inquiratur per Patriam, Et predict' E. similiter, &c. Ideo, &c. See 1 Instr' Cleric' 216, &c. Ast. Ent. 218. al's 250. Pl. Gen. 343. 2 Modus Intrand. 233. Clerks Assist. 77. Hansf. 106. Thomp. 426.

Repl'.

In a *Scire Facias* to have Execution of a Recovery in Debt, Defendant pleads a Release after Judgment. Repl', That the Release was made at another Place, *per Dureffs*.

Scire Facias & Release.

§. ' **E**T predict' A. dic' qd' ipse ab Executione debiti & dampn' predict' in hac parte habend' per aliqua preallegat' precludi non debet quia dic' qd' ipse A. tempore confection'

Repl' per Dures.

‘ section’ scripti pred’ fuit imprisonat’ per pre.
 ‘ dict’ J. R. & alios de Covina sua apud C.
 ‘ in Com’ N. & ibidem in Prisonsa detent’
 ‘ quousque idem A. scriptum predict’ per vim
 ‘ & duritiam Imprisonament’ ill’ prefat’ J. R.
 ‘ fieri fecit sigillavit & deliberat, Et hoc para-
 ‘ tus est verificare, Et unde pet’ judic’ & exe-
 ‘ cution’ predict’ sibi in hac parte adjudicari,
 ‘ &c.

Rejo’ qd’ fuit
 ad largum.

‘ Et predict’ J. dic’ qd’ predict’ A. tempore
 ‘ confection’ scripti predict’ fuit sui juris ad
 ‘ largum & extra quamlibet prisonam, Et qd’
 ‘ ipse scriptum illud ex mera & spontanea vo-
 ‘ luntat’ sua eidem J. sigillavit & deliberavit,
 ‘ Et non per vim & duriciam Imprisonament’
 ‘ prout predict’ A. superius placitando allega-
 ‘ vit, Et de hoc pon’ se super Patriam, Et
 ‘ predict’ A. similit’, Ideo precept’ est Vic’
 ‘ N. &c. Vide *Rast. Ent.* 250.

Repl’ for a
 just Debt.

¶. To *Duress de Imprisonament’* the Plaintiff
 replies, That the Bonds were made for a just
 Debt of 18 l. *per quod Quer’ procuravit eum arre-*
stari per Warranti sur Latitat, Et hoc petit, &c.
Ast. 248. *al’s* 280.

Repl’, and
 traverseth
 the *Dures*.

Repl’ *al Dures*, That the Defendant being
 committed to the *Fleet* in Execution at the Suit
 of the Plaintiff, and afterwards being indebted
 to the Plaintiff in 20 l. *solvend’ cum inde requisit’*
fuiisset, fecit scriptum pro solutione 20 l. And tra-
 verseth the *Dures*, and Issue upon the Tra-
 verse.

Traverse.

¶. ‘ Absque hoc qd’ predict’ T. imprisona-
 ‘ tus fuit per eund’ M. & al’ de Covina sua &
 ‘ ob vim & duritiam Imprisonamenti ill’ scrip-
 ‘ tum predict’ fecit & sigillavit prout predict’
 ‘ T.

' T. superius allegavit, Et hoc, &c. Unde
' pet' judic' & debitum, &c.

Issue sur
Traverse.

' Et predict' T. ut prius dic' qd' ipse tem-
' pore confection' scripti predict' fuit impri-
' sonat' per prefat' M. & al' de Covina sua vi-
' delc' apud L. in Paroch' & Ward' predict'
' & ibidem in prifona detent' quousque idem,
' T. per vim & duritiam imprifonamenti ill
' scriptum illum prefat' M. fecit & sigillavit
' prout ipse superius allegavit, Et de hoc pon'
' se super Patriam, Et predict' M. similit', &c.
' Vide *Aft.* 281. *al's* 249.

§. Debt upon a Bond against a Mayor, Sheriff, Bar per Ma-
and Community. Bar, That the Mayor was im- jor & Com-
prison'd, *Quousque ipse Major Vic' & Communitas* munitat'.
fec' scriptum. ' Plaintiff protestando qd' fuit sui
' juris a largum protestandoque etiam qd' fecer'
' script' ex sua mera voluntate, &c. Pro pla-
' cito moratur in Lege, Et jung' in morac'.
' Vide *Rast. Ent.* 251.

Upon a Bond for Appearance.

§. **D**Ebt upon a Bond of 40 l. made to the Bar per
Plaintiffs, Bailiffs of the Borough of Durefs.

D. with Condition to appear at the next Ses-
sions of Peace for the said Borough. Bar, That
he was imprifon'd by the Plaintiff's and others
of their own Covin, until he made the Bond.

Repl', That the Defendant was indicted at Repl' per In-
such a Quarter-Sessions for several Trespases dictment, &c.
and Mildemeanors; and among others, for
brewing of Ten Barrels of Strong Beer, and
selling them without giving any Notice to the
Officers of Excise; and that he was taken by
a *Capias*, &c. and thereupon he entred into
the said Bond, which was made for his Appea-

Demur.

Obj. to the
Bond, *sed*
Judic' pro
Quer'.

rance at the next Sessions, &c. *Et non per Co-
vinam predict'*, *Et hoc petunt qd' inquiratur per*
Patriam, &c. Def' Demur'.

And one Objection only in this Case was
taken by the Defendants Council, *viz.* That
the Plaintiffs, as this Case is, have no Autho-
rity to take a Bond in their own Names with
such a Condition, but they ought to have taken
a Recognizance in the Names of the King and
Queen. *Sed non allocatur*; and the Plaintiff
had Judgment. *Vide 1 Lut. 497, 501.*

Bar per Minas, &c.

TO an Action brought by the Chamber-
lain of London, Defendant pleads, *Qd' fecit*
scriptum per Minas Majoris London.

Bar per Mi-
nas Majoris
London.

Bond Came-
rario.

¶ **E**T predict' J. in propr' persona sua
ven' & defend' vim & injur' quan-
do, &c. Et dic' qd' predict' T. W. nunc
Camerarius Actionem suam predict' vers'
eum habere non debet [vel potius dic' qd'
ipse de debito predict' virtute script' predict'
onerari non debet] quia dic' qd' ante confe-
ctionem scripti pred' quidam G. B. Mil' fuit
Major Civit' London, Qd'q; idem Major
ante confectionem scripti predict' scilt' pre-
dict' 14 die Julii Anno 29. supradicto apud
S. in Com' Sur' eidem J. tales & tantas Mi-
nas de Imprisonament' corporis ipsius J. in
Gaola de Newgate London nisi ipse ducentas
libras prefat' tunc Majori adtunc instanter sol-
veret vel scriptum predict' prefat' nuper Ca-
merario facere & sigillare vellet imposuit qd'
idem J. postea scilt' eisdem die & Anno apud
L. in Paroch' & Warda predict' scriptum
prefat' nuper Camerario ob metum Mina-
rum

rum illarum fecit, Et hoc parat' est verificare,
Unde pet' judic' si predict' nunc Camera-
rius Action' suam predict' vers' eum habere
debeat, &c.

Et predict' T. W. nunc Camerarius dic' Repl' Came-
qd' ipse per aliqua preallegat' ab Action' rar' qd' fuit
sua predict' habend' precludi non debet, ad largum.
Quia dic' qd' predict' J. tempore confectio-
scripti predict' fuit sui juris ad largum &
scriptum illud prefat' W. B. nunc Came-
rario ex mera & spontanea voluntate sua
fecit & non ob metum minarum de Impri-
sonament' corporis ipsius J. per predict' G. B.
Mil' Major' London imposit' prout predict'
J. superius allegavit, Et hoc pet' qd' inquirat-
tur per Patriam, Et predict' J. similic', Ideo
precept' est Vic', &c. Vide *Thoms. Ent. 209.*
Et vide postea.

Alit' per onerari non Debet secundum,
Rast. Ent. 250.

¶ **E**T predict' R. per J. W. Attorn' suum Bar per mi-
ven', (&c.) Et dic' qd' ipse de debito nas Impriso-
predict' virtute script' predict' onerari non nament'.
debet quia dic' qd' predict' J. & alii de Co-
vina sua tempore confectiois scripti predict'
apud J. predict' eidem R. tales & tantas mi-
nas de vita sua & mutilatione membrorum
suorum imposuer' qd' nisi idem R. scriptum
predict' prefat' J. facere vellet idem J. ac
predict' alii de Covina sua predict' ipsum R.
caperent & imprisonarent, ob metum quo-
rum idem R. scriptum prefat' J. tunc & ibm'
fec', Et hoc parat' est verificare, Unde pet'
judic' si ipse de debito predict' virtute scripti
predict' onerari debeat, &c.

Repl' ex
spontanea
voluntat'.

‘ Et predict' J. dic' qd' ipse precludi non,
‘ quia dic' qd' predict' R. tempore confe-
‘ ction' script' predict' fuit sui juris ad largum
‘ & scriptum illud ex mera & spontanea vo-
‘ luntat' sua pefat' J. fec' & non ob metum
‘ minarum prout predict' R. superius allegavit,
‘ Et hoc pet' qd' inquiretur per Patriam, Et
‘ predict' R. similit', &c.

Narr' by Baron and Wife, Administratrix.

Bar per Minas R. Intestati Quer'.

Bar per mi-
nas Intestati
Quer'.

¶ ‘ **E**T predict' J. H. in propr' person' sua
‘ ven' & defend' vim & injur' quan-
‘ do, &c. Et dic' qd' ipse de debito predict'
‘ virtute script' predict' onerari non debet,
‘ Quia dic' qd' predict' R. tempore confectio-
‘ script' ill' eidem J. H. de vita sua & mutu-
‘ latione Membrorum suorum sibi inferend'
‘ nisi idem J. H. scriptum illud pefat' R. facere
‘ & sigillare vellet apud S. in Com' E. impo-
‘ suit, Qd' idem J. H. scriptum predict' ob
‘ metum minarum illarum pefat' R. tunc
‘ ibim' fec', Et hoc parat' est verificare, &c.
‘ Unde pet' judic' si ipse de debito predict'
‘ virtute scripti predict' onerari debeat, &c.

Repl' per
Adm' qd'
Def' fuit
ad largum.

‘ Et predict' C. & J. dic' qd' ipsi per aliqua
‘ preallegat' ab Actione sua predict' habend'
‘ precludi non debent, Quia dic' qd' predict'
‘ J. H. tempore confectio-
‘ script' predict' fuit sui juris ad largum & scriptum illud ex
‘ mera & spontanea voluntate sua predict' R.
‘ fecit & non ob metu minarum & prout pred'
‘ J. H. superius allegavit, Et hoc pet' qd' in-
‘ quiratur per Patriam, Et predict' J. H. simi-
‘ lit', Ideo precept' est Vic', &c. Vide *Rast.*
‘ *Ent.* 324.

¶ Qd'

§. Qd' Quer' per alios minat' fuit Def' de Minat' per
captione & Imprisonament' nisi faceret scrip- Alios.
tum, &c. 28 H. 6. 8.

§. ' Def' minister del Priory placitat qd' Priory.
fecit scriptum per minas. *Rast. Ent. 250. b.*

§. Debt upon a Bond against a succeeding Prior.
Prior. Bar, That the late Prior and Covent
sealed the Deed *per Minas, &c. Id. Rast. 251. a.*

§. ' Simile per Canonicos, 28 H. 6. 8.

*Aliter per onerari non debet de verberatione
Imprisonament' & al Dampn' corporal', &c.*

§. ' **O** Nerari non debet, Quia dic' qd' pre- Bar.
dict' J. & al' de Covina sua dicto tem-
pore confection' ejusdem scripti tales & tan-
tas minas prefat' R. de verberatione & impri-
sonament' corporis sui ac al' Dampn' corpo-
ralia ei inferend' nisi ipse scriptum illud face-
ret apud L. in Com' L. imposuit qd' idem
R. scriptum illud ob metum minarum ill'
ibidem tunc fecit sigillavit & eidem J. deli-
beravit, Et hoc, &c. Unde pet' judic' si
ipse, (&c.)

Precludi non, quia dic' qd' dicto tempore Repl' &
confection' script' predict' idem R. scriptum Issue.
illud ex mera & spontanea voluntat' sua fecit
sigillavit, & eidem Quer' deliberavit, Et non
ob metu minarum modo & forma, &c. Et
hoc pet' &c. Vide *Hans. Ent. 106.*

Aliter

*Aliter per Actionem non de Arrestatione
& Imprisonament.*

¶ **E**T predict' W. per J. P. Attorn' suum
ven' & defend' vim & injuriam quan-
do, &c. Et dic' qd' predict' J. Actionem
suam predict' vers' eum habere non debet,
Quia dicit qd' predict' J. tempore confe-
ctionis scripti predict' eidem W. tales & tantas
minas de captione arrestatione & impriso-
nament' Corporis sui sibi inferend' nisi ipse
scriptum predict' prefat' J. facere & sigillare
vellet apud B. predict' imposuit qd' idem W.
scriptum illud ob metum minarum illarum
prefat' J. adtunc & ibidem fecit, Et hoc parat'
est verificare, Unde petit judicium si Actio,
&c.

Precludi non debet, Quia dicit qd' predict'
W. dicto tempore confectionis scripti predict'
fuit sui juris ad largum & scriptum illud ex-
mera & spontanea voluntate sua eidem J. fe-
cit & non ob metum minarum prout predict'
W. superius allegavit, Et hoc petit qd' in-
quiratur per Patriam, Et predict' W. simi-
liter, &c. Ideo, &c. Vide *Clerks Assist.* 313.
Simile per Action' non de minis de vita,
& mutilatione Membrorum, *Idem* 72. Si-
mile *Bro. Vad.* 501. al's 491. Simile per
Action' non, de sigillation' Indentur', *Id.* 492.
Simile *Thomps.* 426. *Bro. Red.* 172. *Pl. Gen.* 343.
Hansf. 106. I *Instr. Clerical.* 217, &c.

Obser.

Observations, &c.

NOte, It's said, *Durefs* is not intended, but When *Durefs* is intended, where the Party was wrongfully impri- is intended. soned till he make the Bond, 3 *Leon.* 239.

It is no Plea, that it was done by *Durefs* by If by a Stranger, without making the Obligee Party Stranger. to the *Durefs.* *Kiel.* 154. a.

If the Defendant pleads the Obligation was Double Plea. made by *Durefs* of Imprisonment, and by Menace of Imprisonment, it's double, 1 *Com.* 140. a. 19 *Ed.* 4. 4. declares, That the Obligation was made to B. it's a good Plea for the Defendant to say that the Obligation was made to S. by *Durefs*, without any Traverse, for Traverse. this is but Matter of Supposal, 22 *Ed.* 4. 40. by *Jenny.*

The Defendant pleads *Durefs* of Imprisonment; its no good Replication for the Plaintiff to say, That he menac'd to bring a Suit against him for Arrears of Rent according to Law, and by Process of Law to imprison him if he can, unless he would seal the Obligation; for this is not any Answer to the Bar, 16 *Ed.* 4. 7. b. Repl', no Answer to the Bar.

The Defendant pleads *Durefs*: The Plaintiff saith, To this he shall not be receiv'd, for that after, such a Day after the Date of the Obligation, the Obligation was inroll'd in Chancery. *Cur' pro Quer'.* In such Case he may not deny his Deed. 16 *H.* 7. 5. Repl', that the Bond was inrolled.

The Husband may avoid the Deed that he hath sealed by the *Durefs* of the Imprisonment of his Wife or Son, but not of his Servant. So Mayor and Commonalty may avoid a Deed sealed by *Durefs* of Imprisonment of the Mayor, 2 *Brownl.* 276. Durefs per Uxor', &c.

§. The

Where the
Prisoner was
no Relation.

§. The Defendant pleads, That *Roberts* was imprison'd, and this Bond was given by him and the Defendant for Inlargement. The Plaintiff demurr'd. Judgment *pro Quer'*, this *Roberts* being no Father, Husband, Wife, or near Relation, in which Cases the Bond would be void, 3 *Keb.* 238. *Warn & Sandowne, Durefs Bro.* 9.

Where the
Defendant
was charged
for stealing
his own
Horse.

§. *Durefs* pleaded: And the Case on the Evidence was, The Plaintiff charged the Defendant with Felony for stealing a Horse, and procured a Warrant from a Justice of Peace, whereby he was taken; and being in Custody, upon Promise of the Plaintiff to discharge him, sealed the Bond, and thereupon was immediately discharged. And it appeared that the Horse was the Defendant's own Horse; and *Roll* directed the Jury that the Bond was gotten by *Durefs*, these Proceedings being but to cover the Deceit. *Alleyn, p.* 92.

Durefs where
the Bond was
sealed.

§. Debt upon a Bond in an inferior Court, *Durefs* was pleaded, and no Place certain alleged: This may be ill upon a special Demurrer, but it is well after a Verdict, there being a Place where the Obligation was made *infra Jurisdictionem*; and the Party cannot plead *Durefs*, unless where the Bond was actually sealed. 2 *Keble* 630. *Cubit and Green.*

Action con-
fessed, Judg-
ment revers'd.

§. The Defendant after Issue *de Durefs* at the Assize, *relict a Verificatione dic' qd' ipse non potest decere Actionem, &c.* Vide the Form of the Entry, and the Error was *decere* for *dedicere*, and revers'd. *Cro. Jac.* 343.

The Issue was *per Minas*, and the Jury find *Durefs* plead-
 it was *per metum Imprisonament*. *Per Cur'*, the ed specially.
Durefs ought to be pleaded specially, but the
 Verdict being that the Plaintiff threaten'd, *Qd*
imprisonaret Def' & crimen felonie ei imponeret
nisi, &c. it is ill, being no more than by Law
 he may charge him with. 1 Keb. 516. *Picard*
and Lawrence.

The Defendant pleads he made it *per Minas Cogn' Action'*
de vita, &c. The Plaintiff said he did it *spon-*
tanea voluntate, and traversed the *Minas*. The
 Defendant *Cognovit Actionem. Vide* the Entry,
Cro. Eliz. p. 840. Brown and Holland.

Debt by H. J. Executor of S. Defendant *Simile.*
 pleads *per Minas*, and after Issue join'd before
 the *Nisi prius* confesseth the Action, the Con-
 fession is in the *Debit* only, whereas it ought
 to be in the *Detinet*. *Per Cur'*, The Defendant
 hath relinquish'd the Bar, the Declaration re-
 mains without Defence; and so *pro Quer'*.
Moor, n. 921. Foyner and Ognell.

In the 1 Lev. Rep. 68. it is said *Durefs* cannot If *Durefs* may
 be where the Person is in Prison by the King's be where the
 Writ. An *Audita Querela* was brought upon a Party is in
 Release given after Judgment: The Issue was, Prison by the
 that the Release was made *per Durefs*; and it King's Writ.
 being tried before *Bridgman* Chief Justice of the
 Common-Pleas, the Evidence was, That the
 Defendant not having good Cause of Action
 caused the Plaintiff to be arrested, and de-
 tain'd in Prison till he made the Release, with
 Threatenings that he should lie and rot if he
 would not seal the Release; whereupon he
 made the Release, and was presently discharg'd.
 And by *Bridgman*, he being in Custody in
 Course of Law by the King's Writ, it was not
 a *Durefs* to be pleaded in Avoidance of the
 Deed; but that being arrested without Cause
 of

of Action, he had his Remedy by an Action on the Case: But he offer'd to have it found specially, if *Baldwin* would desire it; but he did not, and the Jury gave their Verdict that the Release was good. *Id. Lev. 69.*

Bar per Coverture & Deins Age.

Bar.

‘ **E**T predict’ J. per A. D. Attorn’ suum
 ‘ ven’ & defend’ vim & injuriam quan-
 ‘ do, &c. Et dic’ qd’ predict’ T. C. Actionem
 ‘ suam predictand’ versus eum habere non de-
 ‘ bet quia dicit qd’ ipsa tempore confectionis
 ‘ scripti predict’ cooperta fuit de T. E. viro
 ‘ suo adtunc superstitie & in plena vita existen-
 ‘ apud K. in Com’ E. & hoc parat’ est verifi-
 ‘ care, Unde petit judicium si predict’ T. C.
 ‘ Actionem suam predict’ versus eam habere
 ‘ debeat, &c.

Repl’

‘ Et predict’ T. C. dicit qd’ ipse, &c. Pre-
 ‘ cludi non, Quia dic’ qd’ predict’ J. tempore
 ‘ confectionis scripti predict’ fuit sola & non
 ‘ Cooperta de predict’ T. E. prout predicta J.
 ‘ superius allegavit, Et hoc petit qd’ inquiratur
 ‘ per Patriam, Et predict’ J. similiter Jo’, &c.
 ‘ Vide *Rast. Ent. 168. Pl’ Gen. 351.*

Bar.

‘ *ff.* Et predict’ E. in propr’ persona sua
 ‘ ven’, &c. Et dic’ Action’ non, Quia dic’ qd’
 ‘ ante tempus quo supponitur scriptum predict’
 ‘ fact’ fuisse eadem E. disponlata fuit cuidam
 ‘ T. R. apud C. in Com’ B. que quidem dis-
 ‘ ponsalia int’ eos tempore que supponitur
 ‘ script’ predict’ fact’ fuisse, continuat’ fuer’ &

‘ adhuc continuantur, Et hoc, &c. Unde pet’
‘ judic’ si Attorn’, &c.
‘ Precludi non, Quia dic’ qd’ pred’ E. tem- Repl’.
‘ pore confection’ scripte’ predict’ fuit sola &
‘ non de prefat’ T. R. Cooperta prout eadem
‘ E. superius allegavit, Et hoc pet’ qd’ inqui-
‘ ratur per Patriam, &c. Vide Pl. Gen. 318.

*Qd’ Quer’ die Orig’ pros’ fuit cooperta
de Viro.*

¶ **E**T predict’ A. &c. ven’, &c. Et dic’ Bar.
‘ qd’ Action’ non, quia dic’ qd’ eadem
‘ J. tempore impetrationis Brevis sui fuit co-
‘ operta de quodam S. tunc viro suo qui qui-
‘ dem S. apud E. in Com’ G. adhuc superstes
‘ & in plena vita existit, qui quidem S. non
‘ nominatur Quer’ in Brevis predict’, Unde
‘ pet’ judic’ si Action’, &c.
‘ Et predict’ J. dic’ qd’ ipsa per aliqua, &c. Repl’.
‘ Precludi non debet quia, dic’ qd’ ipsa die
‘ impetrat’ Brevis sui scilt’ tali die Anno, &c.
‘ fuit sola, Absq; hoc qd’ ipsa eodem die aut
‘ unquam postea fuit cooperta de prefat’ S. pro-
‘ ut predict’ A. superius allegavit, Et hoc, &c.
‘ Unde pet’ judic’ & debitum suum predict’
‘ unacum dampnis, &c.
‘ Et predict’ A. dic’ qd’ pred’ J. pred’ die Rejo’ & Issue.
‘ impetrat’ Brevis sui pred’ fuit cooperta de pre-
‘ fat’ S. adtunc viro suo prout ipse superius al-
‘ legavit, Et de hoc pon’ se super Patriam, &c.
‘ Vide Rast. Ent. 168.

¶ **A**liter, Qd’ Quer’ cooperta viro tem-
‘ pore Exhibitionis Bille. Pl. Gen. 350.

Aliter

*Aliter qd' Def' est cooperta viro tempore
levation' Querel'.*

Bar.

§. ' **E**T predict' Def' dic' Action' non, quia
' dic' qd' ipsa eadem Def' tempore le-
' tion' Querel' ipsius Quer' cooperta fuit cum
' quodam A. J. adtunc & adhuc viro suo qui qui-
' dem A. J. adhuc superstes & in plena vita
' existit videlt' apud L. predict', &c. Unde
' pet' judic' si predict' Quer' Action', &c.
' Vide Cl. Assist. 81.

Aliter per Def'.

Bar.

§. ' **A**Ction' non, quia dic' qd' ipsa tem-
' pore confection' scripti predict' co-
' opert' fuit de quodam T. E. viro suo adhuc
' in plena vita existen' videlt' apud H. in
' Com' G. qui quidem T. non nominatur in
' Brevi predict', Unde pet' judic' si Actio,
' &c.

Repl'.

' Precludi non, quia dic' qd' predict' Def'
' tempore confection' script' predict' fuit sola,
' & non cooperta de predict' T. E. prout
' predict' Def' superius allegavit, Et hoc pa-
' rat' est, &c. Vide Bro. Vad. mecum 491. Aliter
' to the Writ, Bro. Vad. 492.

See 3 Instr. Clericalis 59, 60, 61, 62. Abate-
ment by reason of Marriage.

Note, Feme Covert within Age may be given in
Evidence on Non Assumpsit pleaded; per Hales,
and not denied. Vide Infants Lawyer 146.

If Husband and Wife are taken in Execution; the Escape of the Husband is the Escape of the Wife; and he being escaped, she shall not be detain'd. 1 Vent. 51.

Bar per diens Age, per onerari non debet.

§. 'ET predict' G. P. per J. M. Attorn' Bar.
'E suum ven', &c. Et dic' qd' ipse de debito predict' virtute scripti predicti onerari non debet, Quia dic' qd' ipse tempore confection' scripti ill' fuit infra etatem viginti & unius Annorum, Et hoc parat' est verificare, Unde petit iudicium si ipse de debito predict' virtute scripti predict' onerari debeat, &c.

'Et predict' W. dic' qd' ipse per aliqua pre. Repl'.
allegat' ab Actione sua predict' habend', Precludi non debet, Quia dic' qd' predict' G. tempore confection' scripti Obligatorii predict' fuit plene etatis viginti & unius Annorum & amplius & non infra etatem, prout predict' G. superius allegavit, Et hoc petit qd' inquiretur per Patriam, Et predict' G. similiter, &c. Ideo, &c. Vide Rast. Ent. 163. a.

§. 'Aliter per onerari non debet & conclu. Simile.
dit si Action', &c. Idem, Rast. 163. a. Clerks Assist. 76. Thomps. 427.

§. 'Simile al Bill', 1 Brownl. 88. Bill'.

§. 'Debt sur several Contracts, Et Def' Contract'.
placitat' qd' predict' diebus Contract' ipse fuit infra etatem. Repl', Et Issue inde. Rast. Ent. 163.

P

§. 'Vide

Sur Emisset.

ff. ' Vide ante, Bar al Emisset de Mercimoniiis, Def' placitat' infra etat' & similis al mutuat', Et vide Co. Ent. 125. per Actionem non, &c.

' Repl' al mutuat' qd' fuit plene etatis, & al Emisset qd' Merc' fuer' empt' pro necessar' vestitu. Simile 3 Brownl. 132. Vide postea.

ff. ' Simile per Actionem non, Rob. Ent. 227.

ff. ' Simile, Hansf. Ent. 106. Simile Cleric Assist. 76.

Bar.

ff. ' Aliter, Et modo, &c. Action' non quia dic' qd' ipse idem C. tempore confection' script' Obl' predict' fuit infra etat' viginti & un' Annorum, videlicet etat' 17 Annorum & non amplius, Et hoc, &c. Unde &c.

Repl' fuit plen' etat'.

' Quer' precludi non, quia dic' qd' predict' C. tempore confection' script' Obl' predict' fuit plen' etatis 21 Annorum modo & forme prout predict' C. superius placitando allegavit, Et hoc pet' qd' inquiretur per Patriam Et predict' C. similis, Ideo, &c. Vide 1 Infr Cleric. 216.

Bar.

ff. ' Aliter, Quando, &c. Et dic' qd' ipse de debito predict' virtute script' Obl' predict' onerari non debet quia dic' qd' ipse idem D. tempore confection' scripti ill' fuit infra etat' 21 Annorum videlicet etat' 20 Annorum & non amplius, Et hoc, &c.

Repl' & Issue.

' Precludi non, quia dic' qd' idem D. tempore confection' scripti predict' fuit plen' etatis 21 Annorum & amplius & non infra etat'

etat' viginti & un' Annorum modo & forma
prout idem Quer' superius placitando allega-
vit, Et hoc pet' qd' inquiratur per Patriam,
&c. Vide Pl. Gen. 334. Simile al Bill',
1 Mod. Intr. 186. Bro. Red. 176.

ff. ' Nil debet per Patriam al Mutuat' & Bar, Repl',
Diens Age al Bill'. Repl' qd' Def' fuit inde- & Rejo'.
bitat' Quer' in denar' pro medicament', & fec'
Billam pro secur' solution'. Rejo' qd' non fuit
indebitat' pro medicament', Ast. 241. al's 273.

ff. Entry of an Imparlance and Recog. Simile,
nizance in Debt, where the Defendant pleads,
Infra etat'. Repl' qd' script' Obl' fact' fuit pro
necessar' Apparat'. Rejo' qd' non fuit pro necessar'
pparat', Et Exit' inde. Rob. Ent. 215.

ff. ' Quando, &c. Et dic' qd' Actio non, Bar al Emisset.
quia dic' qd' ipse ad predict' seperal' tempora
emption' Mercimon' predict' fuit infra etat'
21 Annorum, Et hoc, &c. Unde, &c.

' Precludi non, quia dic' qd' predict' Panna Repl' fuer'
Lanea ipsius J. per predict' R. in forma pre- necessar' ap-
dict' empt', fuer' empt' ad & pro necessar' parat'.
& convenien' apparat' & coopertura corpo-
ris predict' R. Et hoc, &c. Unde pet' ju-
dic' & debitum, &c.

' Et predict' R. dic' qd' predict' Panna Rejo'.
Lanea predict' J. per predict' R. in forma
predict' empt' non fuer' empt' ad & pro con-
venien' & necessar' Apparat' & coopertura
Corporis predict' R. prout predict' J. superius
allegavit, Et hoc, &c. Vide Bro. Red. 200.
Simile in Casu, Vidian 40. Bro. Red. 95. 104.

Upon this Matter of Infancy pleaded, it is Infant's Bond
to be observ'd, That if an Infant make an Obli- voidable.
gation, this is not void, but voidable.

Therefore if an Infant seal a Bond, and he be sued thereon, he cannot plead *Non est factum*, but it must be avoided by special Pleading, and conclude Judgment *Si Actio*; for the Bond was not void, but voidable. 5 Rep. 119. 1 H. 7. 18. 1 Vent. 102. 2 Keb. 851. 3 Keb. 798. Tapper's Case, Winch 63.

Defendant pleads, *Deins Age & Disagreement to the Demise.*

Bar.

Disagree-
ment.

Traverse.

¶ **E**T predict' J. per R. R. Attorn' suum ven' & defend' vim & injur' quando, &c. Et dic' qd' predict' C. Action' suam predict' versus eum habere non debet quia dic' qd' ipse idem J. predicto tempore confection' Dimission' predict' in Narr' predict' superius fieri supposit' necnon ad predict' Fest' Annunc' beate Marie Virginis Anno Regni dicti Domini Regis nunc secundo supradicto fuit infra etat' 21 Annorum. Qd'q; idem J. existen' infra etat' ut presertur post confection' Dimission' predict' & ante predict' Festum Annunciation' beate Marie Virginis Anno secundo supradicto scilt' 20 die Martii Anno Regni dicti Domini Regis nunc 2. supradicto possessionem Tenementorum predict' ut presertur Dimiss' reliquit, & ad Dimissionem predict' disagreevit scilt' apud W. predict', Absq; hoc qd' idem J. tenementa predict' ut presertur Dimiss' post disagreement predict' habuit seu occupavit pro ut predict' C. per Narr' suam predict' superius suppon', Et hoc, &c. Unde pet' Judic' si Actio, &c. Vide Clift 149.

& Deins Age.

273

It is said, That if an Infant submits himself Abitreement to an Arbitrement, it is voidable, for he may voidable. wave it if it be to his Prejudice during his Minority; but if he do any Thing which amounts to an Agreement at his full Age, it shall bind him. *Noy, pag. 93. Stone and Knight, Latch 21.*

A Bond bears Date when the Defendant was within Age, but it was sealed and deliver'd at full Age; the Time of making the Bond shall be when the Bond is sealed, and not when it bears date. *1 Brownl. Rep. 31.* Sealing a Bond after Date.

Debt on a Bond dated the 20 Junii, and delivered the 18th of said Month. The Defendant pleads by Protestation, it was delivered the 18th Day, *Absque hoc*, that at that Time he was of full Age, *Noy, p. 34.*

It is said, That if the Bond be of excessive Value, the Infant may traverse, *Absque hoc*, that it was for necessary Apparel, and the Plaintiff must reply specially, and shew the Bond to be suitable to the Price of the Things; and it is query'd, If in such Case the Jury ought to find *Non est factum*. *1 Keb. fo. 416.* If a Bond be good for Things suitable.

But see *1 Lev. 86.* Where Debt was brought upon a single Bill, the Defendant pleaded, that the Bill was made by him when within Age. The Plaintiff replied, That it was for necessary Victuals and Cloaths deliver'd to him, and suitable to his Quality. The Defendant demurr'd: And it was argued for the Defendant, That the Bill was void as well as a Bond, but Contract or Promise for Necessaries is good. *Secondly*, That it was not averr'd that they were deliver'd to him to his own Use, and therefore cited *2 Cro. Ives v. Chester*, where such an Exception is allowed to be good. But it was said on the other Side, That a single Bill A single Bill may be good, though a Bond not. Averment of the Delivery.

Bill for Necessaries is good, but a Bond with a Penalty not, and cited *Co! Litt. 172. a. 3 Cro. 920.* And so the Court held. And as to the second Exception it was said, That in *Poph. Rep.* of the Case of *Ives and Chester*, it was disallow'd; And so the Court held here that the Exception was not good; for when the Things are deliver'd to him, and suitable to his Quality, it cannot be intended but that they were for his own Use. And Judgment was given for the Plaintiff, *msi.*

Obligation
double Va-
lue.

Note, In Crook, Hill. 45 Eliz. 920. The Plaintiff had paid Money for the Necessaries of the Infant, and took Bond in double the Sum, it was therefore said to be void; otherwise, if he had taken Obligation for the very Sum. 26 H. 8. 2.

Where the
Infant af-
firm'd him-
self to be of
full Age.

There is a Case in 1 *Levinz. 169. Johnson v. P.:* For that the Defendant being an Infant affirm'd himself to be of full Age, and by that Means the Plaintiff lent him 100 *l.* and that so he had cheated the Plaintiff by his false Affirmation. After Verdict for the Plaintiff upon *Non Cul.* and 100 *l.* Damages, it was moved in Arrest of Judgment, That the Action did not lie for such a false Affirmation, but that the Plaintiff ought to have informed himself by others, and cited *Grove and Nevill's Case* to be adjudg'd in *C. B. 16 Car. 2.* where in a Case against an Infant for selling a false Jewel, affirming it to be a true one, adjudged that the Action did not lie. To which it was answer'd, That it is a Trespass upon the Case, and that an Infant is chargeable for Trespasses, although not for Contracts. *Keeling and Windham* held that the Action did not lie, because the Affirmation being by an Infant was void, and is not like unto Trespass, Felony, &c. for there is a Fact done. *Twisden dubitavit,* for Infants

Infants are chargeable for Trespafs. *Dyer* 105.
And so if he cheats a Man with false Dice:
Sed adjournatur.

In *Winch. Rep.* p. 114. *Ashly* and *Collins*, it is Where Er-
said, If an Infant make an Obligation, and be- ror or Deceit
ing sued upon it, an Attorney without War- against an
rant suffers a Judgment by *Non sum Informatus*; A:torney.
if he were within Age, he shall have a Writ
of Error, if he were not, he shall have a Writ
of Disceit against the Attorney, but no *Audita*
Querela. See before concerning Apprentices.

It may be further observ'd, as to Infants, Infants bound
That it is a known Rule, that Infants are bound by their ne-
by their Contracts for Necessaries, as *Cro.* cessary Con-
Jac. 494. and that a Bond or Bill taken with tracts, and
a Penalty for Necessaries will be adjudged void; single Oblia-
otherwise, if it were only single, and for the gations.
very Sum due, or laid out: But if it be with a
Penalty, it so far extinguisheth the Contract,
that it can never be reviv'd; and if he pro-
mise at full Age to pay it, it shall not be good.
26 H. 8. 2.

Again, an Infant shall not be bound by his For what Ne-
Contract or Bargain for any Thing but for cessaries.
his Necessity, viz. Diet, Apparel, Learning,
and necessary Physick: Therefore it was ad-
judg'd in *Dale* and *Copping's* Case, the Promise
of an Infant to pay Money for the Curing him
of the Falling-Sickness is good, and shall bind
him, 1 *Bulstr.*

But an Action doth not lie against an Infant Not upon an
upon an *Infimul computasset* for Diet, because *Infimul com-*
the Infant may be misreckon'd; but if the Infant putasset.
promise a certain Sum for his Diet, there need
not be an Averment it was worth so much.
Palm. 528.

And 2 *Roll. Rep.* 271. *Tyrrel's Case*, no Contract binds him, but what concerns his own Person.

For Meat,
Drink, and
Learning.

If the Contract be for Meat, Drink, or Learning, Case will lie on the Promise; and although it be not mentioned what Learning, yet that is fit for him, until on the other Part it be shew'd to the contrary; and although he to whom the Promise is made doth not intrust him himself, but pays another for it, the Promise of Repayment is said to be good, 1 *Roll. Abr.* 729. Yet it is said, Contract for Dancing is not binding, *Sid. p.* 112.

If to maintain
his Trade.

If an Infant buy Necessaries for his Household, it shall bind him, 3 *Keb.* 387. But his buying to maintain his Trade, though he gain his Living thereby, it's said, shall not bind him, 2 *Roll. Rep.* 49. *Cro. Jac.* 494.

Vendee a
Trespasser.

If an Infant sells Goods for Money, and doth not deliver them, but the Vendee takes them, he is a Trespasser, and an Action lies against him, 1 *Leon.* 114.

Sale in a Mar-
ket-Overt.

That an Infant's Right regularly is bound by Sale in an open Market; but Sale in Market-Overt of such Tenderness of Age, as that it may appear to the Buyer that he is within Age, bindeth not, 2 *Inst.* 713. See more of these Things in the Treatise call'd, *The Infant's Lawyer, per tot.*

Non est Factum pleaded.

I. Generally.

§. ' **E**T modo, (&c.) Et idem E. defend' *Non est Fa-*
 ' vim & injur' quando, &c. Et dic' *ctum gene-*
 ' qd' ipse de debito predict' virtute script' *ral in B. R.*
 ' Obl' predict' onerari non debet, Quia dic'
 ' qd' script' Obl' predict' non est factum suum,
 ' Et de hoc pon' se super Patriam, Et predict'
 ' A. similiter, Ideo ven' inde jur, &c.

§. ' Quando, &c. Et dic' qd' ipse debito *Simile in C. B.*
 ' predict' virtute script' predict' onerari non
 ' debet quia dic' qd' scriptum illud non est
 ' factum suum, Et de hoc pon' se super Pa-
 ' triam, Et predict' C. similiter, Ideo precept'
 ' est Vic', &c. Vide 1 *Inst. Cleric.* 64. 262.
 ' *Pl. Gen.* 333. 1 *Mod. Intr.* 187. *Rast. Ent.*
 ' 180.

§. ' Simile al Bill', 1 *Mod. Int.* 187. Simile
 ' al 2 Bills, *Pl. Gen.* 334. *Clerks Assist.* 72.
 ' *Thomps.* 424. Quia dic' qd' Billa ill' non est
 ' factum suum, &c.

§. ' Et dic' qd' scriptum predict' non est *Non est Fa-*
 ' Factum predict' A. B. Testatoris, Et de *ctum Testa-*
 ' hoc pon', &c. 1 *Instr. Cleric.* 262. 10 *Co.* 120. *tor.*
 ' 1 *Mod. Intr.* 188. *Winch. Ent.* 202. See af-
 ' ter, concerning the Seal of a Deed being bro-
 ' ken, &c.

Vide 1 Lut. 894. The Plaintiff declares,
That Sir Robert Clarke, by the Name of
John Clarke, became bound to the Testator
in 2001. &c.

Bar, where
R. C. was
bound by
Name of J. C.

Verdict pro
Quer., but
Judgment
arrested.

§. ' **B** A R by Non est factum (sans Oyer)
' Et Issue sur ceo, Special Verdict, Et
' le Obl' trove in hee verba, Noverint, &c. me
' Johannem Clarke, &c. Signed Robert Clarke.
And that the proper and real Name of the
Defendant is *Robert Clarke*, and not *John Clarke*.
Judgment pro Quer'. And upon Error in the
Exchequer, Judgment was revers'd by the whole
Court; and in the Argument of this Case to
maintain the Reversal, these Cases were cited,
viz. *Dyer* 279. b. *Shotbolt's Case*, 3 Cro. 897.
Field and Winlow's Case, Mo. 897. *Panton and*
Charles's Case, Owen 48. 2 Cro. 558. *Wat-*
kins and Oliver's Case, 2 Cro. 640. *Maby and*
Shepherd's Case, 2 Brownl. 48. *Sir Edward*
Ashley's Case. All which are strong and direct
Cases to this Purpose. And it is noted, that
in the Case of *Maby and Shepherd*, Non est
factum was pleaded, and it was found for the
Plaintiff, and yet Judgment was arrested,
Idem, 1 Lut. 895. b.

*Concerning the Mistaking of Names in
Bonds, &c.*

Randulf and
Randolph.

A Man was bound to *Randolph*, and in an
Action brought, he declared he was
bound to *Randulph*. The Defendant pleads
Non est factum, and adjudged it was not his
Deed,

Deed, for that *Randulf* and *Randolph* are Two Names distinct, per Co. in 1 *Rolls Rep.* 271. cited in *Lumlie's Case*.

Sir *Edward A.* was bound in an Obligation by the Name of Sir *Edmund*, and subscribed that with the Name of *Edward*. In Debt brought against him, he pleads *Non est factum*. Per Cur^a, He might well so plead, for it appears that he is not named *Edmund*, and the Original against him was, Command *Edward* al's *Edmund*, and that's not good; for a Man cannot have Two *Christian*-Names, but if he hath another Name at Confirmation, he must be sued by that. 2 *Brownl.* p. 48. Sir *Ed. Ashfield's Case*.

Edward bound by the Name of *Edmund*.

Name at Confirmation.

W. S. was bound to *H.* by the Name of *J. S.* and on that Bond the Action was brought against him by the Name of *W. S.* and he pleaded *Non est factum*, and the Special Matter was found: And it was ruled, That upon the Verdict the Plaintiff should not recover; but the best Way for the Plaintiff was to sue the Defendant by the Name by which he is bound; and then if he appear, and plead *Ut supra*, he shall be concluded by the Obligation. 10 *Eliz.* *Dyer* 279.

W. S. by the Name of *J. S.*

How to declare.

The Defendant saith, *Tempore confectiois scripti*, there was *J. P.* the Father, and *J. P.* the Son, the Plaintiff in full Life, and that he sealed and delivered to *J. P.* the Father, and not to *J. P.* the Son. Judgment *Si Action'*. It is said to be a good Plea, and he need not say *Non est factum* against the Son, 16 *H. 7.* But see *Syderfin*, p. 450. *Gifford* and *Perkins*. The Defendant pleads the Obligation was made to another, and not to the Plaintiff, it's ill; for it amounts to *Non est factum*, 2 *Keb.* 633. the same Case.

J. P. the Father, and *J. P.* the Son.

Cons.

Concerning the Date and Delivery of Bonds.

Bond dated the 24th, and sealed the 27th.

§. Debt on a Bond; the Defendant pleads *Non est factum*, and the Jury find specially, That the Plaintiff declares upon a Bond dated the 24th Day of the Month, and that the Obligation was sealed and delivered the 27th Day; and *utrum* this shall be accounted the same Obligation on which the Plaintiff declares ignorant, &c. *Per Cur'*, It shall be accounted the same; and this is a Plea in Bar, and not in Abatement. *Stiles 414. Leake and Reynolds.*

Bond delivered 23 Eliz. and dated 24.

So one Goddard brought Debt on a Bond, dated 4 Apr. 24 Eliz. The Defendant pleads, the Intestate died before the Date of the Obligation, *Et issint non est factum Testatoris*. The Jury found the Defendant declared this as his Deed the 30th of July, 23 Eliz. but that this was dated as before, and that the Intestate was living the 30th of July, but not the 4th of April. *Per Cur'*, It is his Deed; for though the Obligee in Pleading may not alledge the Delivery before the Date, for that he is estopped to take Averment against a Thing express'd in the Deed, yet the Jury are not so estopp'd; and that the Mistake of the Date of an Obligation shall not hurt upon *Non est factum* pleaded. 2 Co. Rep. 4. Goddard's Case.

Repl' by specially Pleading.

§. Debt was brought on a Bond, which was set forth to be made the 15th of November, 25 Eliz. The Defendant pleads *Non est factum*. The Jury find specially that it was dated the 15th of November, 23 Eliz. but it was not sealed

sealed and deliver'd until the 18th of November, 26 Eliz. *Et si, &c.* *Per Cur'*, This Verdict is found for the Plaintiff, the Issue being generally *Non est factum*, it appears to be his Deed; but peradventure by special Pleading he might have help'd himself. *Cro. Jac.* 136. *Lady Lane vers' Pledall.*

The Defendant pleads *Non est factum*. The Jury found that the Defendant caused the Obligation to be written, and signed and sealed it, and then laid it upon a Table, and the Plaintiff came and took it. *Per Curiam*, This was not the Defendant's Deed without other Circumstances found by the Jury; had the Obligor cast it on the Table, and said, *This will serve*, and the other took it, it had been good. *Cro. Eliz.* p. 122. *1 Leon.* 193. *Chamberlain and Staunton.*

Defendant signed and sealed, and then laid the Bond on a Table, &c.

ss. Bond dated 3 Sept. 1 *Jac.* to pay 100 l. 4 Sept. 2 *Jac.* Defendant confesses it bore Date 3 Sept. 1 *Jac.* but not deliver'd till 17 Sept. 2 *Jac.* and then *fuit primo deliberat'*. *Quer' moratur*; *Et judic' pro Quer'*; for the Bond mentioned in the Declaration is not answer'd, and the Bar naught, without taking a Traverse, *Absq; hoc*, that is was made the 3d of Sept. 1 *Jac.* *Vide 1 Brownl.* p. 104. *Green and Eden, & Yelv.* 138.

To pay 4 Sept. 2 *Jac.* and delivered 17 Sept. 2 *Jac.*

Per Cur, Though there can be no *Primo deliberat'* before the Day of the Date, yet after it may, on *Goddard's Case*, *ut supra*: But Condition to pay Money Three Months after the precedent Marriage not had, is impossible, and so the Condition single and good. 3 *Keb.* 332. *Newland and Dendy.*

As to *primo deliberat'*.

IF

Delivery after Condition impossible.

If the Defendant plead the Delivery after the Condition impossible to be perform'd, then is the Obligation become single, *Yelv. 138. Green and Eden.*

If Evidence be, that the Bond was sealed to the Use of the Plaintiff, it is all one as if sealed and deliver'd to him. *3 Keb. 738, 739. Hawtry and White.*

Where the Delivery is traversable, or not.

The Day of the Delivery of a Deed is not traversable, unless it be upon a special Cause; as if one be bound in an Obligation dated *primo die Octobr'*, to pay 10*l.* at the Feast of *All-Saints* next after the Delivery of the Obligation, and the Obligation is not delivered till the 2d Day of *November*; Upon this Bond the Plaintiff declar'd as deliver'd *primo Octobr'*. Defendant pleads *primo deliberat' 2 Nov.* and that he tender'd the 10*l.* at the Feast of *All-Saints* then next ensuing, *Absq; hoc*, That the Deed was delivered *primo Octobr.* *Jones Rep. 66. Episcopus Norwic' vers' Cornwallis.*

Concerning Obligations joint and several.

Upon a joint Bill.

§. THE Plaintiff counts on a Bill obligatory made by the Defendant to him. The Defendant pleads *Non est factum*. The Jury find the Bill was a joint Bill, made by the Defendant and another to the Plaintiff. *Per Cur'*, It's an ill Plea; but he might have pleaded in Abatement of the Writ, *5 Rep. 119.*

Joint Obligation.

§. The Defendant pleads *Non est Factum*. Jury in a special Verdict find the Bill *in hec verba*: Whereby it appears that the Defendant and J. S. sealed the Bond, and were jointly obliged,

obliged, and the said J.S. yet alive. *Per Cur'*,
 Adjudged *pro Quer'*. *Cro. Jac. p. 152. Stead and*
Moone.

§. Three are bound *conjunctim & divisim*; Three bound,
 in an Action against Two of them, it's said, and Action
 they may plead *Non est factum*. 14 *Eliz.* against Two,
Dyer. 310.

§. C. is bound to pay Money to Two joint- Bond to Two,
 ly, one dies, the other survives, and dies, and Executors of
 makes Executor; Executors bring an Action the Survivor
 vers' C. and declare on the Bond made to the bring the
 Testator and another, and avers not that the Action.
 Testator surviv'd. The Defendant pleads *Non*
est factum: It's an ill Plea; for it was his Deed,
 and the Matter of Variance goes to the Abate-
 ment of the Writ, and not to the Action, and
 it's too late for the Defendant to take Advan-
 tage of it, *Stiles 78. Holdish and Chase*. If the
 Defendant had demanded Oyer of the Deed,
 and enter'd it, he might have demurr'd as to
 the Declaration. *Allen, p. 41. the same Case.*

§. Special Verdict find the Plaintiff hath de- Surviving
 clared on an Obligation made to himself only, Obligee
 without speaking of any other joint Obligee, brings the
 and that the Plaintiff as Survivor hath brought Action with-
 the Action. On *Non est factum* pleaded, *Quære*, out naming
 If it shall be said the Deed of the Defendant in the other.
 Manner as the Plaintiff hath declared? *Per Cur'*,
 The Plaintiff ought to have declared of the
 special Matter; *Non est factum* in this Case is
 no good Plea, for he hath not pleaded it re-
 spective as to the Obligation, but generally,
Non est factum suum, which refers to the Obli-
 gor only; and the Issue is not whether he
 made the Deed to the Plaintiff or not, but
 generally whether he made it all. This Plea,
Non

Non est factum, hath not any Respect to the Obligee; for if the Obligee be a Monk, and there be another Person who bears the Name of the Obligee, yet in such Cases the Obligor cannot safely plead *Non est factum*. *Aliter*, where one is sued who bears the Name of the Obligor, 1 Leon. p. 322. Case 453. Dennis and St. John.

Four bound
Et utrumque nostrum.

If Four are bound in an Obligation by these Words [*Et utrumque nostrum*], the Obligee may charge any of these severally, but if he will have a joint Action of Debt against Two of the Four, the Writ shall abate; for if the Plaintiff will charge them jointly, the other Two which are not named shall be charged also with them jointly by the same Deed, 10 H. 7. 16. 34 E. 3. Dyer 129.

Jointly bound, but severally sealed, &c.

If Two are bound by joint Words, and every of them by himself puts his Seal to the Deed, this shall not make the Obligation several, 10 H. 7. 16. So if it be in the Name of Two joint and several, and they severally deliver it at several Times and Places, this is yet joint and several. 8 H. 6. 31.

If Two bind themselves *vel alter eorum*, this makes the Obligation joint or several, 7 H. 4. 6. b.

2 bind *quemlibet nostrum*.

If Two bind themselves *Et quemlibet nostrum*, this is joint or several, 2 Rolls Abr. 148.

Vel utrumque nostrum.

If Two bind themselves *Vel utrumque nostrum*, this is joint or several, for this Word [*Vel*] makes it several at Election, 2 Rolls Abr. 148. 1 Brownl Rep. p. 121. Cro. Jac. 322. 2 Bulstr. 70.

Three bound jointly and severally, and Debt against Two.

Three were bound jointly and severally in one Bond, and the Obligee brought Debt against Two; this he cannot do, but he may have one *Præcipe* against the Three, or several *Præcipe's*

Precipe's against every one, 27 H. 8. 6. *Et singulos nostrum*, 1 Brownl. 121. is joint or several.

Three were bound in a Bond by these Words, [*Obligamus nos & quemlibet nostrum conjunctim*], it's a joint Bond, and not several; for the Word [*Quemlibet*] is expounded by the Word [*Conjunctim*], 3 Leon. p. 206. *Wigmore and Wells. Mo. p. 390.*

Three bound,
Et quemlibet nostrum conjunctim.

Though sundry Persons may bind themselves *Et quemlibet eorum*, and so the Obligation shall be joint or several at the Election of the Oblige; yet a Man cannot bind himself to Three, and to each of them, to make it joint or several at the Election of several Persons for one and the same Cause, for the Court would be in Doubt for which of them to give Judgment, which the Law will not suffer, 5 Rep. p. 18. b.

One cannot bind himself to Three, and to each of them.

Joint Bond by Three, and the Count general: The Jointure appearing upon Oyer demanded, the Court will intend the others are dead, or not sealed; had the Declaration been on a joint Bond, the Plaintiff must aver the Death of the others, or that they never had sealed, 1 Keb. 936. 840. See the First of Saund. 271. *Cabel and Vaughan*, where the Two others were named upon a joint Bond, yet it appear'd not that they had put their Seals to it, and so the Obligation was single; but if the other Two had sealed as well as the Defendant, then if the Defendant would have taken Advantage of this, he ought not to have demurred, but to have pleaded in Abatement, that the other Two Persons had sealed the Obligation, being yet alive, and so pray Judgment of the Bill.

Joint Bond by Three, and the Count general.

If Two are bound jointly, and one is only sued, he may plead this Matter in Abatement of the Writ; but he may not plead *Non est factum*,

If Two bound jointly, and one sued alone.

Q

Co.

Co. Lit. 283. and he cannot in such Case demur, *Sydesin* 2. 12. and if one of the Obligees be dead, he ought to shew it in his Declaration, See 5 Co. 119.

Bar, that the Bond was made to them Two, and one B.

Two brought Debt on Bond: The Defendant pleads, That the Bond was made to them and one B. and that they Three had an Action of Debt depending against him, and prays Judgment, *Si Actio. Quer' moratur*, and adjudged *pro Quer'*, because an Obligation made to Two, on which they counted, cannot be intended an Obligation made to Three; and if it be a Plea, it's in Abatement of the Bill. *Gro. Eliz.* 202. *Isan* and *Hickcock*.

2. Non est factum speciale.

Non est factum pro eo qd' Obligatio liberat fuit Def' pro Quer' nomine acquietancie post satisfaction' inde, Et Quer' postea Vi & Armis ill' de ipso Def' abstulit.

¶ ' **E**T predict' T. G. in propr' person' sua ven', &c. Et dicit qd' ipse de debito predict' virtute scripti predict' onerari non debet, Quia dicit qd' ipse (tal' die & anno) apud S. in Com' predict' solvit prefat' R. predict' Vigint' libras quas idem R. in plenam Satisfactionem debiti predict' de ipso T. adhuc & ibidem recepit & predictum scriptum Obligatorium eidem T. in nomine acquietancie debiti illius adtunc & ibidem deliveravit in quo Casu scriptum predict' vim suam & effectum totaliter amisit, Et dicit qd' predict' R. postea scilt' (tali die & anno) apud S. predict' scriptum illud Vi & Armis de ipso T. recepit & abstulit, Et dic' qd' scriptum illud non est factum suum, Et de hoc, &c. Jo', &c.

Aliter.

¶ ' Vel sic, Ac idem Def' postea scriptum predict' casualit' amisit, Qd'q; scriptum illud ad manus & possession' predict' Quer' ibidem per

‘ per invention’ deven’, Et sic dic’ qd’ scrip-
 ‘ tum predict’ non est factum suum, &c. Vide
 ‘ 1 *Browns Ent.* 198. Simile *Rast. Ent.* 180.
 ‘ Vide *Dyer* 51.

ff. ‘ Qd’ Prior ante confection’ script’ resig-
 ‘ nasset Prioratum & postea abstulit Commune
 ‘ sigillum & sc’ scriptum, Et sic non est fa-
 ‘ ctum, *Rast. Ent.* 179.

Aliter per Rasuram scripti Obligatorii.

ff. ‘ **E**T predict’ Def’ per J. C. Attorn’
 ‘ suum ven’ & defend’ vim & injur’
 ‘ quando, &c. Et dicit qd’ predict’ Quer’
 ‘ Actionem suam predictam versus eum habere
 ‘ non debet, Quia dic’ qd’ ipse die & anno
 ‘ supradictis scriptum predict’ pro predict’ sum-
 ‘ ma 20 l. scribi fecit & causavit ac illud con-
 ‘ tinens in se tantum summam 20 l. sigillo suo
 ‘ sigillavit & pred’ P. ut factum suum adtunc
 ‘ deliberavit, Et pred’ Quer’, ulterius dic’ qd’
 ‘ post confectionem sigillationem & deliberatio-
 ‘ nem ejusdem scripti predictus Quer’ apud L.
 ‘ pred’ razavit (Anglice, *did raze*) & oblitteravit
 ‘ (Anglice, *put out*) de & ex scripto illo predict’
 ‘ summam 20 l. & in eodem loco scripsit &
 ‘ inseruit predict’ summam 30 l. per quod pre-
 ‘ dictum scriptum fuit vacuum in Lege, Et hoc
 ‘ parat’ est verificare, Unde petit judicium si
 ‘ predict’ Quer’ Actionem suam predict’ ver-
 ‘ sus eum habere debeat, &c.

Bar.

‘ Et predict’ Quer’ dic’ qd’ ipse per aliqua
 ‘ preallegat ab Actione sua predict’ habend’
 ‘ precludi non debet, Quia dic’ qd’ ante sigil-
 ‘ lationem & deliberationem scripti predict’,
 ‘ predict’ summam 20 l. de & ex scripto pre-
 ‘ dict’ razat’ & oblitterat’ fuit & in loco ejusdem
 ‘ summe

Repl’.

Traverse.

Rejo'.

‘ summe predicta summa 30 l. tam per assen.
 ‘ sum ipsius Quer’ quam predicti Def’ in scripto
 ‘ predicto script’ & insert’ fuit; Qd’q; post.
 ‘ quam predicta summa 30 l. in scripto predicto
 ‘ sic ut prefertur script’ & insert’ fuit predict’
 ‘ Def’ die & anno supradictis apud L. predi-
 ‘ ctam scriptum predictum eidem Quer’ ut
 ‘ factum suum deliberavit, Absq; hoc qd’ pred’
 ‘ J. post confectionem sigillationem & delibe-
 ‘ rationem scripti predict’ razavit aut oblitera-
 ‘ vit e scripto predicto, predict’ summam 20 l.
 ‘ prout predict’ C. superius allegavit, Et hoc,
 ‘ &c. Unde petit judicium & debitum suum
 ‘ predict’ unacum dampnis suis occasione de-
 ‘ tention’ debiti illius sibi adjudicari, &c.

‘ Et pred’ Def’ ut prius die’ qd’ pred’ Quer’
 ‘ post confection’ sigillation’ & deliberation’
 ‘ scripti predicti razavit & obliteravit e scripto
 ‘ predicto, predict’ summam 20 l. modo &
 ‘ forma prout ipse superius allegavit, Et de
 ‘ hoc pon’ se super Patriam, Et predict’ Quer’
 ‘ similiter, Jo’ precept’ est Vic’ qd’ Venire Fac’
 ‘ hic, &c. Vide *Bro. Rediviv.* 177. Simile
 ‘ *Brownl.* 90.

Where the
 Deed by Ra-
 zure, &c. be-
 comes no
 Deed.

Note, That in all Cases, when the Obliga-
 tion was once a Deed, and after (before Action
 brought) becomes no Deed, either by Razure,
 Addition, or other Alteration of the Deed, or
 by breaking off the Seal, in these Cases it’s
 said, the Defendant may safely plead *Non est*
factum; for at the Time of the Plea, which is
 in the present Tense, it was not his Deed.
 5 Rep. 119. *Whelpdale’s Case.*

Razure to the
 whole.

If a Deed be razed in the Date after the De-
 livery, it goes to the whole, 5 Rep. 23. *Ma-*
thewson’s Case. See after.

ff. Qd’

ff. ' Qd' post deliberationem script', verbum Four made
' (Four) fuit rasat' & verbum (Forty) inscript' Forty.
' fuit, &c. *Thompson* 181.

ff. ' Simile for the Razure of the Date of Re-
' lease, *Pl. Gen.* 346.

ff. ' Qd' fecit Relaxation' de Arrerag' Red-
' dit' & non de Ingressu in terras, 2 Co. 7.

ff. *Simile* for Razure in the Date of a Wri- Razure be-
ting, *Bro. Vad.* 450. *Repl'*, That the Ra- fore Delivery.
zure, &c. was before Delivery, and Issue
thereupon, (*Ante.*)

ff. *Simile de Villa F.* and *Villa C.* put in its
Place.

ff. ' Qd' per Bill' cogn' se debere M. in xliii l. Razure after
' Et M. in vita sua post deliberationem rasit Delivery.
' Bill' & fec' Lram' x. post Literam l. & sic
' fecit summam lxiii l. *Repl* qd' Def' cognovit
' se debere M. lxiii l. And traverses, that M.
razed the Bill after the Delivery. *Vide* 1 *Mod.*
Intrand' 189. *Simile Bro. Red.* 260. *Simile de*
razura in Billa. *Pl. Gen.* 259.

ff. Debt upon a Bond of 70 l. Bar, That 20 l. made
he made a Bill to the Plaintiff of 20 l. and that 70 l.
the Plaintiff after sealing put the Figure [7] in
the Place of the Figure [2]. *Vide* 1 *Browns*
Ent. 179.

' Et sic idem Def' dic' qd' idem scriptum
' predict' summam 70 l. in se continens, non
' est factum suum, Et de hoc, &c. *Id.* 198.

Aliter per Interlineation' in Bill.

¶ **Q**Uando, &c. Et dic' qd' ipse de debito
 predict' virtute bille predict' onerari
 non debet quia dic' qd' ipse predicto vicesimo
 primo die Junii Anno, &c. supradicto apud L.
 predict' sigillavit & ut factum suum delibera-
 vit quandam Billam Obligatoriam per quam
 idem Jo. cognovisset se debere prefat' Ja. 3 l.
 solvend' ei ad vel super predict' Festum diem
 sancti Lawrencii tunc prox' sequen' dat' ejus-
 dem Bille, Et ad eandem solutionem bene &
 fideliter faciend' idem Jo. obligasset se hered'
 Executor' & Administratores suos per eandem
 Billam, Et idem Jo. ulterius dic' qd' post si-
 gillationem & deliberationem ejusdem Bille
 ac proxim' post hec verba Anglicana in eadem
 Billa content' videlt' (*for the which Payment*
well and truly to be made, I bind me, my Heirs,
Executors, Administrators, and Assigns, firmly
by these Presents.) Predictus Ja. scribi fecit &
 interlineavit inter duodecimam lineam &
 tertiam decimam lineam ejusdem Bille hec
 verba sequen' (*in 7 l.*) Et sic idem Jo. dicit
 qd' Billa predicta hic in Cur' prolat' ac post
 sigillationem & deliberationem ejusdem in
 forma predict' interlineat' & predict' al' verba
 (*in Sept' libris*) in eadem Billa interposit' &
 script', non est factum suum, Et de hoc pon'
 se super Patriam, Et pred' G. similiter Jo', &c.
 Vide 1 *Browns Ent.* 199.

Simile,

*Simile, because the Bill was interlined
after Sealing.*

¶ **Q**Uando, &c. Et dic' qd' ipse de debito *Aliter, for.*
predict' virtute Bill' predict' onerari *Words inter-*
' non debet quia dic' qd' postquam idem Def' *lined.*
' sigillavit & deliberavit Billam predict' pre-
' fat' Quer' in Billa illa de novo script' & inter-
' lineat' fuit in his verbis videlt', [*the said, &c.*]
' Per quod Billa illa sic de novo script' & in-
' terlineat' vim suam perdidit, Et sic idem Def'
' dic' qd' Billa predict' non est factum suum,
' Et de hoc pon' se super Patriam, Et predict'
' Quer' similit', Ideo, &c. Vide 1 *Mod. In-*
' *trand.* 190. Vide *Wilk.* 277.

Simile al Indentur' causa Interlineationis.

¶ **D**Ebt upon a Bond, with Condition for *Simile post*
Performance of Covenants in an In- *Oyer.*
denture. ' Def' pet' auditum scripti pre-
' dict, &c. Et ei legitur, &c. Pet' etiam au-
' ditum Condition' ejusdem scripti, Et ei legi-
' tur in hec verba, (*The Condition, &c.*) Qua
' lecta & audita idem Def' dic' qd' ipse de de-
' bito predict' virtute scripti predict' onerari
' non debet quia dic' qd' post sigillation' Inden-
' tur' predict' int' predict' Quer' & prefat' Def'
' int' hec verba in eadem Indentur' menc'
' videlt', (*granted in and by the said Deed in-*
' *dented as aforesaid,*) & hec verba in eadem In-
' dentur' similit' menc' (*To have and to hold*) hec
' verba, videlt', (*as also one other Grist-Mill, there*
' *also built and erected*) per predict' Quer' apud
' S. predict' script' & interlineat' fuer', Per
' quod Indentura predict' omni suo caret ro-

‘ bore & effectu & vacua in Lege devenit,
 ‘ Et de hoc, &c. Ideo, &c. Vide 1 *Browns*
 ‘ *Ent.* 182. Vide *Moo.* 80. 2 *Mod. Intr.* 221.
 ‘ *Cl. Aff.* 92.

Defeasance.

Note, If the Condition of an Obligation be alter'd, or interlined, this shall avoid the Obligation as well as the Condition. *Aliter* in a Defeasance, 28 *H.* 8. *Dyer* 27. *b.*

Special Verdict.

§. In Debt on Bond, the special Verdict was, That the Defendants were bound to the Plaintiff, being Sheriff, in 60 *l.* (*Noverint nos, &c. teneri B. W. Ar' in 60 l. &c.*) with Condition to appear; and after the Delivery, these Words [*Vic' Com' Oxon*] were interlin'd without Notice or Command of the Plaintiff, *Et utrum factum predict' sit factum predict' H. ignorant, &c.*

Non est factum after a Deed razed.

Per Cur', 1. When a lawful Deed is razed, by which it becomes void, the Obligor may pleaded *Non est factum*, and give the Matter in Evidence; for at the Time of the Plea pleaded it is not his Deed.

Deed altered without the Privity of the Obligee.

2. When any Deed is alter'd in a Point material by the Plaintiff himself, or by any Stranger, without the Privity of the Obligee, be it by Addition, Razing, Interlineation, or drawing a Pen through the Midst of any material Word, by this the Deed becomes void: As if one be bound in 10 *l.* and after Sealing, 10 *l.* is added to make it 20 *l.* it's void.

If in Words not material by a Stranger.

So if the Obligee himself alter the Deed by any of the said Ways, though it be in Words not material, yet the Deed is void: But if a Stranger without his Privity alter it in a Place not material, it shall not be void. And so

to in the Principal Case, the Addition being in a Point not material, and by a Stranger, Judgment was given for the Plaintiff. *Benedict Winchcombe's Case.*

Def' placitat' quod script' Obligator' sigillat' & deliberat' fuit cum spaciis & intervallis.

Quando, &c. Et petit auditum scripti (&c.) Alterat' per le Estranger.
 petit etiam auditum Condition' ejusdem scripti, Et ei legitur in hec verba. ff. (*The Condition, &c.*) Quibus lectis & audit' idem G. dicit qd' ipse de debito pred' virtute scripti obligator' predict' onerari non debet quia dicit qd' ipse pred' (tali die & Anno) suprad' apud London' pred' in Parochia & Warda predict' script' obligator' pred' in narr' pred' spec' cum Condition' predict' diversa spacia & intervalla (*Anglice Blanks and Spaces*) in se continen' videlicet unum spacium in quinta linea ejusdem Conditionis inter hec verba (*One*) & (*Tracy*) & aliud spacium in eadem linea inter predict' verbum *Tracy* & hoc verbum (*in*) & al' spacium in eadem linea inter hoc verbum *Warwick* & hoc verbum *for*, & al' spacium in septima linea ejusdem Conditionis inter hoc verbum (*said*) & hoc verbum *Tracy* in initio septime linee & al' spacium in tertia decima linea ejusdem Conditionem inter hoc verbum (*said*) & hoc verbum *Tracy*, Et scriptum illud cum Conditione ill' diversa spacia & intervalla predict' in se continen' adtunc & ibidem sigillavit & ut factum suum cuidam L. G. ad usum ejusdem T. & eidem T. deliberand' deliberavit, Et idem G. ulterius dic' qd' post scripti- onem sigillationem & deliberationem ejusdem scripti per pred' G. cum Conditionem ejusdem

Vid. Rob.
Ent. 233.

dem cum spaciis & intervallis pred' in eadem
Conditionem existen' predict' L. G. apud
London' predict' in Paroch' & Warda pre-
dictis scripsit & imposuit in primo spacio ejus-
dem Conditionis inter predict' verbum (*One*)
& predictum verbum (*Tracy*) hoc verbum
(*Will.*) & in secundo spacio ejusdem Condi-
tionis inter predict' verba (*Tracy*) &c. hec
verba (*of Ragley*) & in tertio spacio inde inter
predict' verba (*Warwick and for*) hoc ver-
bum (*Esq;*) & in quarto spacio inde in pred'
septima linea inter predict' verba (*said*) &
(*Tracy*) hoc verbum (*W.*) in quinto spacio
ejusdem Condition' inter predict' verbum
(*said*) & predict' verbum (*Tracy*) hoc verbum
(*William*) scripsit & imposuit, Et hoc, &c.
unde, &c.

Repl', Quod
spacia & in-
tervalla relict'
fuer' cum
assensu D. f.

Precludi non debet. Quia dic' qd' bene &
verum est quod spacia & intervalla predict'
fuer' in Condition' predict' superius spec' tem-
pore sigillationis & deliberationis script' obli-
gator' predict' prout idem G. superius allegavit
sed ulterius idem T. dicit qd' ante tempus
sigillationis & deliberationis ejusdem scripti
obligat' in narr' predict' superius spec' scil'
predict' vicesimo die Maii Anno Regni dicti
Domini Regina nunc 38. supradict' apud
London' predict' in Parochia & Warda' predi-
ctis, predict' G. consentivit & agreeavit qd'
predict' L. G. postquam idem G. scriptum
illud sigillaret & ut factum suum pefat' L. G.
ad usum ejusdem T. & eidem T. deliberand'
deliberaret, Et antequam idem L. G. delibe-
raret idem scriptum obligator' eidem T. spa-
cia & intervalla predict' in Condition' pre-
dict' predicto tempore sigillationis & delibe-
ration' script' ill' in forma predict' relict' im-
pleret (*Anglice should fill up*) cum verbis pre-
dictis

dictis in spaciis & intervallis predict' script' & imposit' per quod idem L. G. post predict' sigillationem & deliberationem script' obligator' & antequam ip'm L. G. deliberasset script' obligat' ill' p'fat T. spacia & intervalla predict' in predict' Conditione predict' tempore sigillationis & deliberationis script' predict' in forma predict' relict' apud London' pred' in Paroch' & Warda predictis cum verbis predictis in eisdem spaciis & intervallis script' & imposit' implevit (Anglice *did fill up*) modo & forma prout pred' G. superius placitando allegavit, Et hoc, &c. Unde, &c.

' Et predict' G. ut prius dic' qd' ipse idem G. predict' vicesimo die Maii Anno 38, supradict' apud London' predict' in Parochia & Warda predict' script' obligator' predict' in narr' predict' superius spec' cum predict' Condition' predict' seperal' spac' & intervall' in barr' ipsius G. superius mentionat' in se continent' scribi fecit sigillavit & ut factum suum p'fat' L. G. ad usum predict' T. & eidem T. deliberand' deliberavit modo & forma prout idem G. superius placitando allegavit, quodque post scriptionem sigillationem & deliberationem ejusdem scripti per ipsum G. cum Condition' ill' cum spaciis & intervallis predict' in eadem Condition' existen' predict' L. G. apud L. predict' in Paroch' & Warda predict' scripsit & imposuit eisdem seperalibus spaciis & intervallis predict' seperalia verba in predict' barr' ipsius G. superius mentionat' modo & forma prout idem G. superius placitando similiter allegavit absq; hoc qd' ante tempus sigillationis & deliberation' predict' scripti obligator' in narr' predicti superius spec' predict' G. consentivit & agreeavit, &c. (ut in Replication') usq; (*should fill up*) cum verbis predict' in
 ' spaciis

Rejo', Per
 manutention'
 placiti & tra-
 verse Repli-
 cac' Quer.

Traverse.

Surrejo', Per
manutention'
Replicat', Et
Exit' super-
inde.

' spaciis & intervallis predict' script' & imposit'
' modo & forma prout predict' T. superius
' replicando allegavit. Et hoc, &c. Unde,
' &c.

' Et predict' T. dicit qd' ante tempus sigil-
' lation' & deliberation' predict' script' obligat'
' in narr' predict' superius spec' predict' G. con-
' sentivit & agreeavit qd' pred' L. G. postquam
' idem G. script' ill' sigillaret & ut factum suum
' prefat' L. G. ad usum ejusdem T. & eidem
' T. deliberand' deliberaret & antequam idem
' L. deliberaret idem scriptum obligator' ei-
' dem T. spacia & intervalla predict' in Con-
' ditionem predict' predicto tempore sigillation'
' & deliberation' script' ill' in forma predict'
' relict' impleret (Anglice *should fill up*) cum
' verbis predictis in spaciis & intervallis predict'
' script' & imposit' modo & forma prout pred'
' T. superius replicando allegavit, Et hoc, &c.
' Jo. &c. Vide *Rob. Ent.* 233, 234.

Space left for
the Day.

¶ The Defendant pleads, That at the Time
of the Delivery there was not any Day written
in the Deed, but a Space left; and after the
Delivery the Plaintiff put in a Day, *Et issint*
non est factum: The Plea had been better to
have set forth the Special Matter, *per quod*
Scriptum pred' perdidit Effect' & Judgment
Actio, Moo. n. 8. Sed Vide Moo. 80.

Implication.

¶ The Defendant pleads, That *factum pred'*
was made and delivered without a Date, and
afterwards the Plaintiff put a Date thereto.
Et issint non est factum, it was adjudged an ill
Plea; for he first confesseth it to be his Deed
by saying *factum pred'*, and afterwards denieth
it, he might have said, *Non est factum* generally
Cro. Eliz. p. 800. Cospey and Turner.

Qui

Quibus lectis & auditis idem H. dicit qd' onerari non debet quia dicit qd' post confectionem scripti predicti & post deliberationem ejusdem predictus J. inter hoc Anglicanum verbum aut dictionem scilt' (*Casements*) & hoc Anglicanum verbum sive dictionem scilt' (*without*) in indorsament' predict' specificat' oblitteravit & delevit hec Anglicana verba aut dictiones scilt' (*except Casements*) & diversa alia Anglicana verba continen' in toto unam lineam in indorsament' predict' tempore deliberationis scripti predicti specificat' ex predicto indorsamento per quod scriptum predictum vim suum & effectum caruit & vacuum devenit, Et hoc paratus est verificare, &c.

Simile per deletion' & obliteration' in Indorsamento scripti.

Precludi non quia dic' quod ipse post confectionem scripti predicti & deliberationem ejusdem inter hoc Anglicanum verbum aut dictionem scilt' (*Casements*) & hoc Anglican' verbum aut dictionem scilt' (*without*) in indorsament' predicto' specificat' non oblitteravit nec delevit hec Anglicana verba aut dictiones scilt' (*except Casements*) & diversa alia Anglicana verba aut dictiones continen' in toto unam lineam in indorsament' predicto tempore deliberationis scripti predicti specificat' ex predicto Indorsamento prout predict' T. superius allegavit, Et hoc, &c. Vide Bro. Red. 202. Simile 3 Brownl. 135.

Rejo', Quod non oblitteravit nec delevit prout, &c. Et Exit' superinde.

Quando, &c. Et petit auditum scripti predicti & ei legitur, &c. petit etiam auditum Indorsamenti ejusdem scripti & ei legitur in hec verba. ff. *The Condition*, &c. Quibus lectis & auditis idem H. dicit qd' ipse de debito predicto virtute scripti predicti onerari non debet qui dicit qd' ipse die & anno supradictis apud London' in Parochia & Warda predictis per quod-

Non est factum special' promiss' lectur' de Condition'

- dam

Def^r, Homo
laicus &
minime lite-
ratus.

dam scriptum obligator' de predicta sum-
ma viginti librar' prefat' R. facere se concessio-
Conditionem sequen' in se continen' videlicet
quod si idem H. Executor' vel Administrator'
sui solverent vel solvi causarent prefat' R. de-
cem libras legalis monete Anglie modo &
forma sequen' videlicet quinq; libras inde sup-
vicesimum quartum diem Junii tunc proxim'
sequen' dat' ejusdem scripti qui tunc foret in
Anno Dom', (&c.) Et al' 20 s. super vicesi-
mum quartum diem Junii extunc prox' se-
quen', Et sic deinceps annuatim super vicesi-
mum quartum diem Junii 20 s. quovulq; 10 libr'
essent solut' tunc scriptum illud pro nullo
heretur alioquin in suo rebore permanet &
effectu, Et idem H. dicit quod ipse tem-
pore confectionis scripti predict' per prefat'
R. hic in Cur' prelat' fuit homo laicus & mi-
nime literatus, quodq; scriptum predictum sibi
lect' fuit & Anglice exposit' quasi scriptum
conditionem predict' per ipsum superius reci-
tat' & non aliam in se continen' per quod
idem H. lectur' & exposition' ejusdem fidem
adhibens & credens scriptum illud conditionem
predict' per ipsum superius recitat' & non
aliam in se continuisse cum sic non continuit
scriptum illud sigillavit ac illud ut factum suum
prefat' R. adtunc & ibidem deliberavit, Et
sic idem H. dicit quod scriptum predict' hic
in Cur' prolat' conditionem predictam per
ipsum H. superius in forma predict' recitat'
in se minime continens non est factum suum,
Et de hoc pon' se sup' priam', Et pred' R.
similit', &c. Jo. &c. Vide *Thomps. En.* 173.

Aliter,

Aliter.

QUibus lectis & auditis idem W. Def' Def', Homo
 dic' qd' ipse de debo. pred. virtute laicus & mi-
 scripti pred' onerari non debet quia dic' qd' nime litera-
 ipse est homo laicus & minime literatus ac qd' tus.
 tempore confectio' scripti pred' idem W.
 mutuat fuit de eodem H. 5 l. solvendum eidem
 H. ad Festum Annunc' beat' Marie Virginis tunc
 prox' sequen' Quodq; pred' script' obl' ad tunc
 sibi lect' & exposit' fuit quasi script' obl' de pred'
 penal' summa de 10 l. cum Conditione pro so-
 lutione pred' 5 l. ad pred' Fest' Annunc' beat'
 Marie Virginis tunc prox' sequen' in pred' tunc
 Domo mansional' ipsius F. in H. pred' superius
 nominat' per quod idem W. credens scriptum
 illud fuisse script' obl' continens in se quod idem
 W. tent' fuit eidem H. in pred' 10 l. cum Con-
 ditione pro solutione pred' 5 l. ad pred' Fest'
 Annunc', &c. tunc prox' sequen' in pred'
 Domo mansional' ipsius F. in H. pred' scrip-
 tum illud' prefat' H. sigillavit & illud prefat' H.
 deliberavit, Et sic idem W. dic. quod idem
 scriptum hic in Cur' prolat' Condition' pred'
 per ipsum W. superius recitat' in se minime conti-
 nen' non est factum suum, Et de hoc pon'
 se sup' Priam', &c. Vide 1 *Brown's Ent.* 198.
 1 *Mod. Intr.* 206.

Idem, 1 *Brown's Ent.* 198. *Executor pleads Special' non*
special, non est factum, because the Testator be- *est factum per*
ing Homo laicus & minime literatus, intention- *Executor.*
nally sealed and delivered to the Plaintiffs a
Letter of Attorney concerning the Possession of some
Tin Works, it being so read and expounded to
him, Cum idem scriptum tam pred' Lram' At-
torn' quam pred' script' obl' de pred' debito
100 l. in se contineret, idem scriptum sigillavit,
 ac

ac illud ut factum suum prefat' W. adtunc
 & ibidem deliberavit, Et sic idem R. dic'
 quod pred' scriptum per pred' W. hic in
 Cur' prolat' plus quam pred' Lram' At-
 torn' videlt' pred' script' obl' de pred' de-
 bito 100 l. in se continens non est factum
 suum, Et de hoc pon' se super Priam', &c.

Repl' al' Re-
 lease.

ff. ' Bar per Release, Repl' quod ipse laicus
 concessit facere relaxation' de Debito tantum,
 Et sic sibi lect' & exposit' fuit per quod idem
 J. D. scriptum illud credens ipsum per idem
 scriptum nullam aliam Actionem preterquam
 Actiones Debiti tantum prefat' B. J. &c. re-
 laxasse sigillavit, Et sic dicit quod scriptum
 illud plus quam relaxationem Action' Debit'
 in eo continens non est factum suum, Et hoc
 pet', &c. Vide *Rast. Ent. 91. a.*

*Bar, that the Writing was read to him
 as for 10 Marks only, and not for
 20 l.*

Bar.

A Ven', &c. Et dicit qd' ipse de Debito
 predict' virtute scripti predict' onerari
 non debet, quia dicit quod ipse die & Anno
 supradictis apud C. per quoddam scriptum
 suum obligatorium de decem Marcis tantum,
 prefat' C. ad pred' Festum solvend' teneri se
 concessisset, Et dicit quod ipse est homo
 laicus & minime literatus, quodq; scriptum
 predict' hic in Cur' prolat' sibi lectum fuit
 & Anglice exposit' quasi continens ipsum
 A. in decem Marcis tantum prefat' C. obli-
 gat' fuisse, per quod idem A. credens scrip-
 tum illud de decem Marcis tantum fieri,
 idem scriptum sigillavit, & sic idem A. dicit
 quod

qd' scriptum predict' hic in Cur' prolat', continens ipsum A. in dict' vigint' libr' p'fat' C. teneri, non est factum suum, Et de hoc pon' se super Patriam, Et predict' A. similiter Ideo, &c.

Vide *Rast. Ent.* 180. b. Simile per duos Def', *Hans. Ent.* 109.

§. *Simile*, For that the Indenture was falsely read and expounded to him, 1 *Mod. Intr.* 189.

Quibus lectis & auditis idem R. S. dicit qd' ipse de debito predict' virtute scripti predict' onerari non debet quia dicit qd' ipse tempore confectionis scripti predicti fuit Homo laicus & minime literatus & scriptum predictum eodem tempore ei lect' fuit & in Anglicanis verbis exposit' ut scriptum continen' in se Conditionem sequen' videlt' qd' si pred' R. indemnificaret predictum R. H. & omnes Inhabitantes de Parochia sancte Marie in Cantabr' in Com. C. ubi predict' R. tunc inhabitavit ab omnibus oneribus que acciderent ratione cujusdam Infantis nati in predict' Parochia de corpore S. M. consanguin' predicti R. S. qd' tunc idem scriptum esset nullius valoris per quod idem R. S. lectioni & expositioni scripti predicti fidem adhibens ac credens scriptum predictum conditionem predictam per ipsum superius recitat' in se continere ubi revera nullam talem Conditionem in se continebat scriptum predictum sigillavit & ut factum suum adtunc & ibidem deliberavit, Et sic idem R. dicit qd' scriptum predict' hic in Cur' prolat' continen' in se Conditionem predictam superius lect' & ut prefertur exposit' & non predict' Condition' per ipsum superius recitat' non fuit factum suum, Et de hoc

Bar per special' non est factum eo qd' Def' concessit facere scriptum cum alia Conditione.

‘ hoc pon’ se super Patriam, &c. Vide Bro.
 ‘ Red. 201.

Condition
 wanting.

§. ‘ Ad scriptum simplex, Bar qd’ concess.
 ‘ sit facere scriptum eum tali Conditione vi-
 ‘ delt’, &c. Rast. Ent. 180, 181.

Simile placit’, And sets forth the Condition:

That it was
 read to him
 as with a
 Condition.

§. ‘ Et idem R. dic’ qd’ ipse tempore con-
 ‘ fection’ scripti predict’ fuit Homo laicus &
 ‘ minime literatus qd’q; idem scriptum sibi
 ‘ lect’ fuit & Anglice exposit’ quasi scriptum
 ‘ Condition’ predict’ in se continen’, Per quod
 ‘ idem R. lecture & expositioni ejusdem fidem
 ‘ adhibens scriptum illud sigillavit ac illud pre-
 ‘ fat’ T. deliberavit, Et sic idem R. dic’ qd’
 ‘ scriptum predict’ simplex hic in Cur’ prolat’
 ‘ Condition’ in se minime continens non est
 ‘ factum suum, Et de hoc pon’ se super Pa-
 ‘ triam, &c. Pl. Gen. 260.

As to false
 Reading.

Note, If a Man be illiterate, and the Deed is not read to him, or read in other Words, or the Effect declared in other Form than is contain’d in the Writing, he shall avoid this, and plead *Non est factum*, 2 Rep. 9. *Thoroughgood’s Case*. So if a Man be lettered, and is blind, and the Deed is read to him in other manner, he shall avoid the Deed.

Non

*Non est factum, eo qd' Def' deliberavit
scriptum ut Schedul', &c.*

§. ' Qd' Def' scribi fecit scriptum & deli- Deliberavit
beravit ut Schedulam, ad intention' ut Schedul'.
' qd' unus J. poneretur in timore ita qd' per-
' sonalit' compareret, &c. *Rast. Ent. 12.*

§. ' Qd' liberavit script' al W. indorsand' Repl'.
cum Conditione stare Arbitrio & tunc de-
liberand' Quer' ut factum. *Rast. Ent. 181.*

§. ' Qd' Def' & Quer' fecer' scripta alter Simile, with
alteri, & liberaver' eo Arbitratoribus int' eos Reference to
' elect' deliberand' per eos si eorum Arbitrium an Arbitre-
' non foret performat, Et Arbitratores non sec' ment.
' Arbitrium, Et tamen Quer' obtinuit scriptum
' ab Arbitratoribus. *Id. Rast. Ent. 181.*

§. ' Qd' Def' scribi fecit & deliberavit ut With Refer-
Schedulam sub Conditione qd' Quer' deli- rence to the
' beraret infra tres dies unam Indentur' dimis- Delivery of
' sion' & script' Obl' pro performat' Conven- an Indenture,
' tion' inde fact' per Def', quod non delibe- &c.
' ravit, 2 *Bro. 82.*

§. ' Simile sub Conditione, Qd' un' J. de-
' liberaret Def' script' Obl', in quo Def' stetit
' obligat' eidem J. *Vidian 154. 1 Mod. Intr. 188.*

§. ' Simile sub Conditione, Qd' Quer' & Marriage.
' Ux' nunc Def' non Maritarent, *Thomps.*
' *Ent. 141.*

Qd' Def' deliberavit scriptum al V. deli-
berand' Testator' Quer', qui recusavit illud
accipere, per quod V. reliquit scriptum cum

Testator' Quer' ut Scheda non ut factum.
Co Ent. 145. b. (Ut sequitur.)

Narr', sur
Obl' per
E. T. vid'
Exec' J. T.
vers' W. B.

¶ ' Et predict' W. per R. C. Attorn' suum
' ven' & defend' vim & injur' quando, &c.
' Et dic' qd' ipse de debito predict' virtute
' scripti predict' onerari non debet, Quia dic'
' qd' ipse primo die Maii Anno supradicto apud
' Civit' E. in Com' Civit' E. scriptum predict'
' scribi fecit & sigillavit, ac illud adtunc & ibm'
' cuidam V. C. gen' postea deliberavit ad de-
' liberand' prefat' J. T. ut factum suum, Po-
' steaq; predict' V. post reception' scripti pre-
' dict' videlt' 25 die Maii Anno Regnor'
' dict' nuper Regis & Regine Angl' 3 & 4.
' apud London videlt' in Paroch' sancti D. &c.
' optulit ad deliberand' prefat' J. T. scriptum
' illud Obl' ut factum ipsius W. B. Ac idem J.
' adtunc & ibidem idem script' Obl' de eodem
' V. ut factum ipsius W. B. recipere penitus
' recusavit, Per quod predict' V. adtunc &
' ibidem reliquit idem script' Obl' cum predict'
' J. ut Schedulam non ut factum, Et sic idem
' W. dic' qd' scriptum illud non est factum
' suum, Et de hoc pon' se super Patriam, &c.
' Quer' demurr', Et Def' jung' in Morac'.
' Vide Co. lib. 3. fo. 26. b. & 5 Co. 119. b.
' Dyer 167.

As to the
Tender of
the Bond,
and the Re-
fusall to ac-
cept it.

As to this Matter it is said, That if an Obligation be delivered to another to the Use of the Obligee, and this is tender'd to him, and he refuse it, in such Case the Delivery hath lost its Force, and the Obligee may never after agree to this, and therefore the Obligor may say, *Non est factum*. So if the Obligation be made to a *Feme Covert*, and the Baron disagree

to it, the Obligor may plead *Non est factum*; If the Baron disagrees.
 for by the Refusal the Bond hath lost its Force,
 and becomes no Deed. 5 Co. 119. *Whelpdale's*
Case, 1 *Anderson* 4. *Tawe's Case*.

¶ ' Qd' Def' deliberavit script' ut Schedul' To be his
 ' sub Conditione qd' si Def' ante tale Festum Deed, if De-
 ' non solveret Quer' 40 s. tunc deliberaret fendant paid
 ' script', alit' non, quos 40 s. Def' ante Fe- not 40 s.
 ' stum obtulit & Quer' recusavit, Et sic non
 ' est factum. Pl. Gen. 281.

Qd' deliberat' fuit ut Schedul' sub conditione
qd' si quidam T. S. faceret scriptum, voc'
a Counter-Bond, pro indemn' Def'
a script' in demand' tunc scriptum illud
ut factum deliberat' foret, Et quia ipse
nullum securitatem Def' dedit, dicit qd'
scriptum in Cur' prolat' non est factum
suum, Et exit' superinde ut sequitur.

¶ ' **E**T predict' H. per T. C. Attorn' suum Bar
 ' ven' & defend' vim & injuriam quan-
 ' do, &c. Et dic' qd' ipsa de debito predicto
 ' virtute scripti predicti onerari non debet quia
 ' dic' qd' ipsa die & anno supradictis apud L.
 ' predict' scriptum predict' scribi fec' & sigilla-
 ' vit ac illud cuidam H. V. deliberavit ut Sche-
 ' dulam sub Conditione sequen' videlt' qd' si
 ' quidam W. C. faceret sigillaret & ut factum
 ' suum deliberaret eidem H. quoddam scrip-
 ' tum Obligatorium, voc' a Counter-Bond, five
 ' al' Securitatem pro indemn' conservatione
 ' ejusdem H. a predicto scripto obligatorio
 ' hic in Cur' prolat' qd' tunc predict' H. V.
 ' scriptum predictum pefat' S. ut factum ejus-

dem H. deliberaret, Et aliter non, Ac licet
 predict' W. C. hucusque non fecit sigillavit
 & ut factum suum deliberavit eidem H. ali.
 quod scriptum Obligatorium, voc' a Counter-
 bond, sive aliam securitatem pro indemn'
 Conservation' ejusdem H. a predicto scripto
 Obligatorio hic in Cur' prolat' predict' ta-
 men H. V. scriptum predictum hic in Cur'
 prolat' prefato S. ut factum ipsius H. deli-
 beravit, Et sic idem H. dic' qd' predict'
 scriptum Obligatorium hic in Cur' prolat'
 prefat' S. per predict' H. V. in forma pre-
 dict' deliberat' (predicto scripto Obligatorio
 voc' a Counter-Bond, sive alia securitate pro in-
 dempn' conservatione ejusdem H. a predicto
 scripto Obligatorio hic in Cur' prolat' per
 prefat' W. C. eidem H. minime fact' securi-
 dam Condition' predictam) non est factum
 suum, Et de hoc pon' se super Patriam, Et
 predict' S. similiter, &c. Vide *Hans. Ent* 115.

Aliter secundum, Bro. Rediviv. 201.

Bar ut supra.

¶ **E**T predict' F. quando, &c. Et dic' qd'
 onerari non, Quia dic' qd' ipse die
 & Anno supradict' in Narr' predict' superius
 spec' apud K. predict', predictum scriptum
 scribi & sigillari fecit, Et ill' cuidam W. W.
 Clerico ut Schedul' salvo & secure custodi-
 end' deliberavit sub Conditione qd' si postea
 D. P. gen' in scripto Obl' predict' nominat'
 inveniret eidem F. sufficien' securitat' eum
 indemnificare contra predict' C. de predict'
 40 l. tunc eidem C. ut factum ipsius F. de-
 liberat' fore aliter non, Et predict' F. in
 facto dic' qd' predict' D. non inveniret eidem
 F. ullam securitatem eum indemnificare
 vers' predict' C. de predict' 40 l. Et predict'
 W.

‘ W. scriptum Obl’ predict’ presat’ C. delibe-
 ‘ ravit, Ideo dic’ qd’ scriptum predict’ eidem
 ‘ C. sic deliberat’ (nulla securitate eidem F.
 ‘ indemnificare eum vers’ predict’ C. de pre-
 ‘ dict’ 40 l. per predict’ D. invent’ existen’) non
 ‘ est factum suum, Et de hoc, &c.

§. ‘ Simile, Quando Quer’ faceret Def’ Release.
 ‘ scriptum Relaxationis, *Rast. Ent.* 181.

§. ‘ Debt sur 2 Obl’, Quoad 1 Obl’ Def’ Release.
 ‘ placitat’, Qd’ deliberavit ut Schedul’ sub Con-
 ‘ ditione qd’ Quer’ faceret Def’ Relaxat’, quoad
 ‘ al Obl’ Condition’ perform’ special’. *Rast.*
 ‘ *Ent.* 182.

§. ‘ Simile, Deliberand’ quando Quer’ fa- Annuit’.
 ‘ ceret Def’ scriptum Annuitatis. *Pl. Gen.* 290.

§. ‘ Qd’ fecit scriptum, &c. Sub Conditione With respect
 ‘ qd’ si Deodand’ pertineret Majori, script’ to a Deodand.
 ‘ foret custodit’ ut Schedul’, sed si pertineret
 ‘ Quer’ Eleemosynario Regis, script’ foret de-
 ‘ liberat’ ut factum, Et qd’ Deodand’ pertinet
 ‘ Majori, &c. *Rast. Ent.* 198. 1 *Browns Ent.*
 ‘ 177.

§. ‘ Simile sub Conditione, Qd’ Def’ osten- With respect
 ‘ deret Quer’ sufficien’ Materiam pro exonera- to a Relief.
 ‘ tione Relevii petit’, vel solveret Quer’ 100 s.
 ‘ quos obtulit, *Rast. Ent.* 181.

§. ‘ Simile de Colloquio habend’ de denar’ To a Dis-
 ‘ solut’ ubi script’ fuit deliberat’ sine Colloquio, course.
 ‘ 3 *Brownl.* 134. *Bro. Red.* 202.

‘ Simile sub Conditione qd’ Quer’ deliberaret
 ‘ Def’ 100 Cados Salis, *Ast.* 221.

Bar, with re-
spect of 200
Barrels of
Salt, to be
first deliver'd
to the Defen-
dant.

¶. ' Et predict' W. per J. P. Attorn' suum
' ven' & defend' vim & injur' quando, &c.
' Et dic' qd' ipse de debito predict' virtute
' script' predict' onerari non debet, quia dic'
' qd' ipse die & anno supradict' apud E. pre-
' dict' scriptum predict' scribi fec' & sigillavit
' & illud cuidam J. C. ut Schedul' deliberavit
' salvo & secure custodiend' & pefat' H. ut
' fact' ejusdem W. deliberand' postquam idem
' W. haberet & receperet de eodem H. ducen-
' Cados Salis (Anglice *Two hundred Barrels of*
' *Salt*) & non antea, Ac idem W. dic' qd' licet
' ipse adhuc non habuit aut recepit de predict'
' H. predict' 200 Cados Salis predict' tamen
' J. C. scriptum predict' pefat' H. ut factum
' ejusdem W. deliberavit, Et sic idem W. dic'
' qd' script' predict' pefat' H. ut fact' ejusdem
' W. in forma predict' deliberat' (pro predict'
' 200 Cadis Salis per ipsum W. de predict' H.
' adhuc non habitis aut receptis) non est fa-
' ctum suum, Et de hoc pon' se super Patriam,
' Et predict' H. similit'. Ideo, &c.

Defeasance.

¶. ' Simile sub Conditione, Qd' Quer' fa-
' ceret Indenturam Defeasancie, 9 Co. 137.

*Notes as to the Delivery of a Bond, &c.
as an Escrow or Schedule.*

How the Plea
may con-
clude.

IN the 3d of *Keb.* 142. *Manning and Bucknal*,
the Defendant pleads it was delivered as an
Escrow, *Et issint non est factum*, *Et hoc paratus*
est verificare. The Plaintiff demurs to the Con-
clusion. *Per Cur'*, This is a Plea that may
conclude either Way, and is most usual with
this Conclusion, though generally upon a gene-
ral

ral Negative Plea, it must conclude to the Country, as *Non assumpsit infra sex Annos. Judic' pro Def'*.

Sed vide 3 Keb. 26. 30. Fortb and Fletcher, Edwards and Webb, where it is said, That of later Time it is adjudg'd, that he must conclude to the Country; and so upon a special Demurrer, *Quia minus apte conclusit. 2 Keb. 805.*

The Defendant pleads, That he was illiterate, and that the Bond was falsely read to him; and further, That it was delivered as an Escrow, and the Condition not perform'd, *Et issint non est factum. Per Cur'*, This is not double, because he concludes *Non est factum*, 38 H. 6. 26, 27.

Note, An Obligation cannot be delivered as an Escrow unto the Obligee himself; but it may be delivered to another to the Use of an Obligee as an Escrow: For the Delivery of it to the Obligee himself, and his receiving it, makes it work as a Deed in the very Instant of the Delivery of it, according to the Effect of a Deed; but being deliver'd to another to the Use of the Obligee, it cannot operate so, because he is no Party to the Deed, nor can take any Thing by it, and doth but only take it as an Escrow, and as an Instrument to deliver to the Obligee at such Time, and in such Manner as the Obligor shall direct; and if he deliver it otherwise, the Obligor may plead *Non est factum. Stiles Pract' Reg' last publ. 180.*

How it may be deliver'd as an Escrow, &c.

And therefore an Obligation may not be deliver'd as an Escrow to the Party himself, upon Condition to be his Deed upon special Delivery, for this is absolute, being made to the Party himself; for Delivery is sufficient without speaking Words, and when the Words are contrary to the Act, they are of no Effect.

But not to the Party himself

Effect. Co. Litt. 36. a. 9 Rep. 136, 137. Thoroughgood's Case, Hob. p. 246. Holford and Parker, More, n. 836. Williams and Green.

Where the
Repl' makes
the Plea good.

Again, that though the Plea, that he delivered it to the Plaintiff as an *Escrow* to be his Deed upon Performance of a Condition, be not good; yet being pleaded, and replied to, and admitted for good, and Issue being join'd, and found false, the Verdict is good, and Judgment well given. Vide Croo. Jac. 85. Blunden and Wood.

Q If first delivered to the Party as a Deed, or as an *Escrow*, upon a Condition precedent.

Yet here is a *Quære* made in the Case following, viz. That if a Deed be delivered to the Party himself first, as his Deed upon Condition, the Deed is absolute; but when it is first deliver'd as an *Escrow*, though to the Party himself, it is not his Deed till it be perform'd: As where one brings an Obligation to me, and prays me to deliver it as my Deed, and I say, *Do such a Thing*, and take it as my Deed, otherwise not, it is clear it is not my Deed until the Thing perform'd; for here the Condition is precedent, so as it was not his Deed until it was perform'd. And therefore a conditional Delivery may be averr'd *sans* Writing; but if once deliver'd as his Deed, it cannot afterwards be defeated, if the Condition be not in Writing. *Quær'* Cro. Eliz. 825. Hawkland v. Gatchell, contra Cro. Eliz. p. 884. Williams and Green.

To deliver it
ut scriptum
factum.

The Defendant pleads the Writing was his, and delivered to one *W.* as a *Schedule* until certain Conditions perform'd, and then to deliver it to the Plaintiff *ut scriptum*, and saith not *ut factum*; yet *per Cur'*, all is one in Construction of Law, 2 Keb. 690, 733. Twiford and Barnard.

Per Hale, An Escrow may be given in Evidence on *Non est factum*, as well as Suspension on *Nil debet*, in *Manning and Bucknal's Case*, 3 Keb. 142. Escrow given in Evidence.

If a Man be obliged to perform Things in such a Deed, it is no Plea to say he deliver'd this as an Escrow, &c. *Et issint non est factum*. 1 Roll. Rep. per Co. 84. in *Fletcher and Tarrer's Case*. If the Defendant is obliged to perform Things.

It is observ'd, That the Party delivering must use these or such like Words, viz. *I deliver this to you as an Escrow, to deliver to the Party as my Deed, upon Condition that he deliver you 20l. for me, or upon Condition that he deliver up the old Bond he hath of mine for the same Money, or the like, as the Case is; and not to say, I deliver this to you as my Deed, and that you shall deliver it to the Party upon certain Conditions; for in such Case it will take Effect presently, &c. And that therefore it must be deliver'd to a Stranger with the like Expressions as before, as an Escrow, and not as a Deed. Perk. Sect. 240, &c. Kelw. 88. Co. Litt. 36, 48.* Words to be used upon a Delivery as an Escrow.

Seal broken, &c.

NOte, As the Seal of a Deed being broken off, it is to be observ'd, That if Two are bound in a Bond, and the Seal of one is broken off, this Mifeasance, *ex post facto*, shall avoid the Deed against both. 11 Rep. 27. *Piggot's Case*. Ex post facto.

The Defendant pleaded *Non est factum Testatoris*; and a special Verdict was, That the Testator was bound in that Bond with Two others jointly and severally, and that afterwards the Seals of the Two others were eaten with Mice and Rats. The whole Deed is said to be avoided by this, for it is not the same Deed; Seals eaten with Mice and Rats.

Where the Deed is several only.

A Seal re-affix'd.

Seal pull'd off after Issue join'd.

How a Stranger ought to plead.

Where he must conclude *Non est factum*.

Deed; and whereas it was joint at the first, now if the Deed should stand good against the Defendant only, it should be his Bond only, it is not an Obligation joint and several, but joint or several at the Election of the Oblige, for he cannot use both, and when by his own Laches he hath deprived himself of his Election, the whole Bond is gone. But in *Mathewson's Case*, 5 Rep. the 100 l. are several, and not joint; and therefore if the Seal of one is torn off, it shall not avoid the Deed as to the others; and there if the Covenantor release to one of the Covenantors, it shall not discharge the others. *March Rep.* 125. *Bayly and Garford*.

The Defendant pleads that it was sealed by him and one *W. C.* and that after the Sealing, the Seal of *W. C.* was worn off, and after re-affixed, *per quod scriptum predict' vacuum in Lege existit*. *Per Cur'*, It's better to plead this special Matter, than *Non est factum*, *Noy*, pag. 112. *Gomercal and Wood*.

The Issue was, *Non est factum*. The Jury did find the Defendant did seal and deliver it; but that after the Day of the Issue join'd, the Seal was pull'd off from the Obligation. *Judic' pro Quer'*. *Cro. Eliz.* 120. *Michel's Case*.

It's said, A Stranger to a Deed shall not plead a special *Non est factum*, as that the Seal is severed from the Deed, *Et issint, &c.* but he ought to plead, *Riens passa per le fait*, 1 *Rolls Rep.* 188. *More and Waldron*.

Also, if the Deed of another be pleaded against a Stranger, he may not plead *Non est factum*, 20 *Ed.* 4. 1. a.

Note, It is said, That in every Case where the Obligation is void, the Defendant shall conclude *Non est factum*. As a *Feme Covert* shall

shall plead *Non est factum*, for it's void by her; so where a Deed is rased or interlined; so where the Obligor was not letter'd; otherwise where the Deed is only voidable, for there he shall shew the special Matter, and conclude Judgment *Si Actio*, 1 H. 7. 15. *Downes's Case*.

As an Infant pleads at the Time of making the Bond he was within Age, he shall not conclude *Issint non est factum*, but Judgment *Si Actio*. Not where the Deed is only voidable

When the Deed is voidable, and so remains at the Time of Pleading, (as in case of Sealing a Bond by an Infant or *Duress*,) here he cannot plead *Non est factum*, but it must be avoided by special Pleading, with concluding Judgment *Si Actio*, 5 Rep. 119. He must conclude Judgment *Si Actio*, &c.

And when an Obligation, or other Writing, is by Act of Parliament enacted to be void, the Party who is bound cannot plead *Non est factum*, but must plead the special Matter, and conclude Judgment *Si Actio*: As on Bond made to the Sheriff against 23 H. 6. cap. 10. or a Bond made against the Statute of Usury, 5 Rep. 119. *Hob.* 72. 166. If Deed be void by Act of Parliament.

If a Defendant pleads *Non est factum*, and further demurs upon the Obligation, the Demurrer is void, *per Prisot*, 35 H. 6. 9. b.

After *Non est factum* pleaded, the Party shall give the special Matter in Evidence, 11 Rep. *Piggot's Case*, 2 Mar. *Dyer* 112. Evidence.

Debt was against G. B. Exec' of S. B. on a Bond made by S. B. Defendant, *ven' & defend' vim & injur'*, &c. Et dic' qd' scriptum predict' non est factum suum. There is no Mention made of S. B. in all the Bar, and therefore *suum* cannot refer to him; but being after a Verdict, and found to be his Deed, *Judic' pro Quer'*, *Latch.* p. 123. *Baker's Case*. Exec'or pleads *Non est factum suum*.

Where

Deed inroll'd.

Where a Deed is inrolled, the Party may not plead *Non est factum*, but he may say *Rien passa per le fait.* 9 H. 6. 60.

Judgment, how to be enter'd.

Upon *Non est factum* pleaded, and found against him that it was his Deed, the Judgment was enter'd *Qd' sit in Misericordia*, where it ought to have been *Qd' capiatur.* Per Cur'. This is a manifest Error; but if the Executor plead *Non est factum*, *Misericordia* shall be enter'd, 2 Bulst. 230. Jones and Cross, 1 Keb. 196. Ellison's Case.

Relicta verificatione cogn' Action'.

The Defendant pleads *Non est factum*, and at the *Nisi prius*, *Relicta verificatione cognovit Actionem.* Judgment that the Plaintiff shall recover, and the Defendant *in mia'*, and not *qd' capiatur*, Noy, p. 4. Barvage and Clarke.

Bar en Debt per Ley Gager.

Vide ante, Nil debet per Legem in Bar sur Debt al Account.

Bar per Rien luy Doit per Ley instant.

¶ **E**T predict' J. K. in propria persona sua ven' & defend' vim & injur' quando, &c. Et dic' qd' ipse non debet prefat' J. S. predict' 40 Solidos nec aliquem denar' inde in forma qua idem J. superius versus eum narravit, Et hoc parat' est defendere contra ipsum & sectam suam prout Cur' Regis hic cons', Et petit se ad Legem suam inde instant' faciend' admitti & admittitur, &c. Et super hoc idem J. perfecit inde Legem suam predict' se duodecima manu, &c. lo' cons' est qd' pred' J. S. nil capiat' per Breve suum

‘ suum pred’ sed sit in mia’ pro flo’ clamore suo,
 ‘ &c. Et predict’ J. K. eat inde quiet’, &c.

¶ ‘ Et predict’ J. per S. A. Attorn’ suum Ubi Def’
 ‘ quando, &c. Et dic’ qd’ ipse non debet pre- vad’ Legem
 ‘ fat’ R. predict’ 4r Solid’ nec aliquem inde & fec’ default’
 ‘ denar’ modo & forma prout predict’ R. supe-
 ‘ rius versus eum narravit, Et hoc parat’ est de-
 ‘ fendere versus ipsum ac sectam suam quali-
 ‘ tercunque, Cur’ Domine Regine hic cons’,
 ‘ Et super hoc dictum est presat’ J. per Cur’
 ‘ Domine Regine hic qd’ ven’ cum lege sua se
 ‘ duodena manu coram Domina Regin’ apud
 ‘ Westm’ die &c. ad faciend’ Legem suam pleg’
 ‘ de lege T. H. & R. M. Idem dies dat’ est par-
 ‘ tibus predictis ibm’, &c. Ad quem diem co-
 ‘ ram Domina Regin’ apud Westm’ ven’ pre-
 ‘ dict’ R. in propria persona sua, Et predict’
 ‘ J. licet ad eundem diem solempnit’ exact’
 ‘ non ven’ sed default’ fec’ Io’ cons’ est qd’ pre-
 ‘ dict’ R. recuperet debitum, &c.

‘ Ad quem diem, &c. ven’ predict’ Def’ in Ubi Quer’
 ‘ propria persona sua paratus ad perficiend’ fec’ default’
 ‘ Legem suam se duodena manu, Et predict’
 ‘ Quer’ licet solempnit’ exact’ non ven’ nec
 ‘ Billam suam predict’ ulterius est prosecut’,
 ‘ Io’ ipse & pleg’ sui de pros’ scilt’ Johannes
 ‘ Doe & Richardus Roe in mia’, &c. Et pre-
 ‘ dict’ Def’ eat inde sine die, &c.

See more of *Ley Gager* in *Rast. Ent.* in every
 Action, in the Title of the same Action, in
 the Division of *Ley*, and in the Notes in the
 Margin. See after for References to Prece-
 dents.

Def' prefecit
Legem suam.

Dict' est At-
torn' Def'
qd', &c.

' Et hoc parat' est defendere versus ipsum
' & sectam suam qualitercunque Cur' Domini
' Regis hic cons', Et qd' predict' Def' vad'
' ei inde Legem suam se duodena manu pleg'
' de lege J. D. & J. R. Et ven' cum lege sua
' hic die, &c. Et dictum est prefat' Attorn'
' predict' Def' qd' tunc habeat hic eundem Def'
' Magistrum suum ad perficiend' inde Legem
' suam idem dies dat' est partibus predictis
' ibidem, &c. Ad quem diem coram Domino
' Rege apud Westm' ven' tam predict' Quer'
' per Attorn' suum predict' quum predict'
' Def' in propria persona sua, Et super hoc
' idem Def' prefecit inde Legem suam pre-
' dictam de duodena manu, Io' cons' est qd'
' predict' Quer' nil capiat per Billam suam
' predict' sed pro flo' clamore suo sit inde in
' mia', Et predict' Def' eat inde sine die, &c.
' Vide *Hansf. Ent.* 109. Intratio Vadiation' Le-
' gis, *Hansf.* 118.

Bar, Al vend'
& Manger
per rien luy
Doit per sa
Ley instante.

ff. ' Et predict' A. in propr' persona sua
' ven', &c. Et tam quoad pred' quatuor Mar-
' cas & octo denar' quam quoad pred' sexagint'
' sex Solid' dic' qd' ipse nec easdem 4 Marcas
' & 8 d. nec predict' 66s. nec aliquem denar'
' inde prefat' J. debet prout idem J. superius
' versus eum narravit, Et hoc parat' est defen-
' dere contra ipsum & sectam suam prout
' Cur', &c. Cons' & pet' se ad legem & suam
' inde instante faciend' admitti & admittitur
' & prefecit inde Legem suam predict' se duo-
' decima manu, &c. Ideo tam quoad pre-
' dict' 4 Marc' & 8 d. quam quoad predict'
' 66 s. Cons' est qd' predict' J. nil capiat' per
' Breve suum predict', sed sit in mia' pro flo'
' clamore suo inde & predict' A. eat inde

‘ sine die, &c. Et quoad predict’ octo libras
 ‘ quas predict’ J. supponit sibi aretro existere
 ‘ de firma predict’ dic’ qd’ predict’ J. Actio.
 ‘ nem suam predict’ inde versus eum habere
 ‘ non debet, Quia dic’ qd’ ipse ante tempus
 ‘ quo aliquid de firma predict’ solvi debuit vi-
 ‘ delt’ ante Festum P. Anno, &c. apud, &c.
 ‘ sursum reddidit prefat’ J. totum statum &
 ‘ terminum que habuit in Camera predict’,
 ‘ Ad quam sursum reddicon’, predict’ J. adtunc
 ‘ & ibidem se agreavit, Et hoc parat’ est veri-
 ‘ ficare, Unde quoad predict’ octo libr’ petit’
 ‘ judicium sic predict’ J. Action’ suam predict’
 ‘ inde versus eum habere debeat, &c.
 ‘ Et predict’ J. quoad predict’ octo libr’ dic’ Rep^r,
 ‘ qd’ ipse per aliqua preallegat’ ab Action’
 ‘ sua inde habend’ precludi non debet, Quia
 ‘ dic’ qd’ predict’ A. non sursum reddidit
 ‘ eidem J. totum statum & terminum que ipse
 ‘ habuit in Camera predict’ prout idem A. su-
 ‘ perius allegavit, Et hoc pet’ qd’ inquiretur
 ‘ per Patriam, Et predict’ A. similiter, lo’, &c.

For Precedents of waging Law *instanter*, see
Rast. Ent. 152, 159. *Hansf.* 108, 118, 119.

1 Instr. Cl. 343.

‘ Def’ perfecit Legem. *Co. Ent.* 119.

‘ Per Legem al Part’, *Rast.* 152, 159, 177;
Pl. Gen. 363, 365.

‘ Nil debet per Legem ad diem, &c. *Rast.* 159.
1 Mod. Intr. 179.

‘ Vide *Rast.* 174, 178. 150. *Ast.* 251. 191. 347.

‘ Per Legem ad diem & Def’ defecit de
 ‘ Lege, *Hansf.* 109. *1 Mod. Intr.* 180. *1 Instr.*
Cler. 344. *Thomps.* 427.

‘ Per Legem ad diem al Debt sur Account
 ‘ devant Auditors & de rinue super examinatione
 ‘ Attorn’ Quer’ juxta Statut’, *Pl. Gen.* 257.
 ‘ Vide anteq.

'Judic' inde. Vide 1 Towns. Judgm. 22,
 31, 33, 41, 42, 204. 1 Mod. Intr. 179,
 180. 112. Hinf. 109. Bro. Vad. 218, 220.
 1 Instr. Ct. 211. 342. Clift. 149, &c.

It is said, The Defendant shall not wage Law
 against an Attorney, because the Court com-
 pels him to be Attorney for the Party, and so
 no voluntary Retainer; otherwise, if it be up-
 on a Suit in a base Court, for there he is bound
 to be his Attorney. 21 Hen. 6. 4. Pl. 5.

To know in what Cases Wages of Law
 doth lie, and in what not, and what Persons
 shall wage Law, and the Manner of perfor-
 ming it; see the Treatise call'd, *The Touch-stone*
of Precedents, from Page 294, to 316.

Bar in Debt by Forein Attach- ment pleaded.

Customs del
 London de
 un' Forein
 Attachment
 placitat' in
 Bar al' Obli-
 gation, sur
 un' Attach-
 ment in le
 Majors
 Court.

'Quibus lectis & audit', &c. Actio non,
 'Quia dic' qd' Civitas London est ani-
 'qua Civitas qd'q; in eadem Civitate talis ha-
 'betur & a tempore cujus contrarii memoria
 'hominum non existit habebatur consuetudo
 'usitat' & approbat' videlt', Qd' si aliqua per-
 'sona affirmavit versus aliquam personam ali-
 'quam Billam Original' debiti in Cur' Domini
 'Regis nunc vel predecessorum suorum nuper
 'Regum Anglie coram Majore & Alder-
 'mannis Civitat' predict' pro tempore existen'
 'in Camera Guibald' scituat' in Paroch' sancti
 'Michaelis Bassishawe in Warda Bassishawe
 'London secund' cons' ejusdem Civitatis tenen-
 'seu tenend', Et ad petitionem persone in ea-
 'dem Billa Original' Quer' nominat' vel ejus
 'Attorn'

Attorn' ibid' pro tempore existen' virtute Bille
 Originalis illius per Cur' ill' servien' ad * Arma
 eorundem Majoris & Aldermannorum infra
 eandem Civitatem ministr' ejusdem Cur' pro
 tempore existen' precept' fuit ad summo-
 nend' personam in eadem Billa nominat' de-
 fend' essend' ad eandem vel prox' Cur' dicti
 Domini Regis nunc vel predecessorum suo-
 rum. predictorum in dicta Camera Guihald'
 Civitatis predict' coram Majore & Alder-
 mannisejusdem Civitatis pro tempore existen'
 tent' seu tenend' ad respondend' Quer' in ea-
 dem Billa Original' de & in placito in eadem
 Bill' Original' spec', Et si hujusmodi servien'
 ad arma ac Minister' Cur' illius hujusmo-
 di prox' Cur' virtute precepti illius coram
 Majore & Aldermannis Civitatis illius pro
 tempore existen' oretenus retornavit eidem
 Cur' qd' persona in Billa Original' defend'
 nominat' nichil habuerit infra libertat' Civi-
 tatis predict' per quod aut tibi sum' potuit
 nec fuit invent' infra eandem libertatem Ci-
 vitatis predict', Et dicta persona in dicta
 Billa Original' defend' nominat' ad Cur' ill'
 ibid' exact' fecit defalt', Et super hoc ad ean-
 dem Cur' testificat' sive notificat' sit eidem
 Cur' per hujusmodi personam in eadem Billa
 Original' Quer' nominat' in propria persona
 sua vel per Attorn' suum ibm' pro tempore
 existen' qd' aliqua al' persona sic indebitat'
 hujusmodi persone in tali Bill' Original' de-
 fend' nominat' in aliqua denariorum summa
 ad summam debiti in eadem Bill' Original'
 spec' aut ad aliquam parcellam inde & ean-
 dem summam in manibus & custod' suis ha-
 buit & ab hujusmodi defend' detineret qd'
 tunc ad petitionem hujusmodi Quer' vel ejus
 Attorn' ibid' pro tempore existen' Cur' pre-
 dict' fiend' per Cur' ill' preciperet oretenus

* Vide Rast.
 Ent. 156. &c.
 158. alicui
 Servien' ad
 Clavam simile
 Vidian 168.
 simile Bro.
 Red. 232. si-
 mile in Cur'
 Exon', Bro.
 Red. 137 si-
 mile Co. Ent.
 (in Cur' Vic'
 L.) 189, &
 142. & Lev.
 Ent. 2. See
 Privilegia
 Londini 224.

' huiusmodi servien' ad arma & ministro Cur'
 ' illius qd' ipse secund' consuetudinem Civitatis
 ' predict' eundem defend' in eadem Billa Ori-
 ' ginal' nominat' per summam illam sic in
 ' manibus & custod' huiusmodi alterius per-
 ' sone secund' consuetudinem dicte Civitatis
 ' attach' ita qd' idem Def' esset ad prox' Cu-
 ' riam vel aliquam aliam Cur' dicti Domini
 ' Regis nunc vel predecessorum suorum pre-
 ' dictorum coram Majore & Aldermannis Ci-
 ' vitatis predict' pro tempore existen' in pred'
 ' Camera Guihald' Civitatis predict' secund'
 ' cons' ejusdem Civitatis tent' seu tenend' ad
 ' respondend' eidem Quer' de & in placito in
 ' Billa Original' predict' spec' & idem servien'
 ' ad arma postea ad huiusmodi prox' Cur' vel
 ' ad aliquam huiusmodi al' Curiam ibid' ut
 ' prefertur tent' seu tenend' oretenus retorna-
 ' vit & certificavit eidem Cur' predict' ipse
 ' virtute precept' ill' talem defend' per sum-
 ' mam ill' sic in manibus & custod' huiusmodi
 ' alterius persone existen' secund' consuetudi-
 ' nem dicte Civitatis Attach', Ita qd' idem
 ' Def' esset tunc ibid' ad eandem Cur' ad re-
 ' spondend' tali Quer' de & in placito in Billa
 ' Original' predict' spec', Et si huiusmodi de-
 ' fend' ad Cur' ill' & ad tres al' Cur' ibidem
 ' separatim prox' extunc secundm' cons' Civi-
 ' tatis predict' tenend' videlt' ad quatuor huius-
 ' modi Cur' sepeal' ad petitionem huiusmodi
 ' Quer' vel ejus Attorn' ibm' pro tempore exi-
 ' sten' solempnit' exact' ibm' non venerit sed de-
 ' falt fecit in eodem placito in Billa Original'
 ' pred' specificat' secund' cons' Civitat' pred' re-
 ' cordat' forent post predict' Attach' in forma
 ' pred' fact' ipse Quer' in eadem Billa Original'
 ' nominat' ad quamlibet earundem Cur' in pro-
 ' pria persona sua vel per Attorn' suum ibm' pro
 ' tempore existen' comperen' & seipsum offeren'
 ' versus

'versus hujusmodi Def' in predicto placito in
 'Bill' Original' predict' spec' secund' cons' Ci-
 'vitat' predict' tunc ad ultimam Cur' dictarum
 'quatuor Cur' vel ad aliquam al' Cur' post pre-
 'dict' quatuor defalt' recordat' ad petitionem
 'in dicta Billa Originali Quer' nominat' vel
 'per ejus tunc Attorn' ibid' pro tempore exi-
 'sten' dicte Cur' fiend' preciperet oretenus per
 'eandem Cur' hujusmodi servien' ad arma qd'
 'ipse secund' consuetudinem ejusdem Cur'
 'Civitatis predict' premon' qd' Scire Fac' hu-
 'jusmodi altere persone in cujus manu & cu-
 'stod', &c. essend' ad al' Cur' dicti Domini
 'Regis nunc vel predecessorum suorum pre-
 'dictorum coram Majore & Aldermannis Civi-
 'tatis predict' pro tempore existen' in predict'
 'Camera Guihald' ejusdem Civitatis secund'
 'cons' dicte Civitatis extunc tenend' osten-
 'dend' si quid pro se haberet vel dicere sciat
 'quare hujusmodi Quer' in Billa Original' pre-
 'dict' nominat' executionem de predict' sum-
 'ma sic ut prefertur in manibus suis Attach'
 '& defens', &c. habere non deberet, Ad quam
 'Cur' si idem servien' ad arma retornavit &
 'testificavit eidem Cur' qd' ipse virtute pre-
 'cepti illius premon' & Scire fecit eidem per-
 'son' in cujus manibus & custod', &c. essend'
 'ibid' in eadem Cur' ad ostendend' in forma
 'predicta prout ei precept' fuit ac hujusmodi
 'Quer' tunc ibidem comparen' in propria per-
 'sona sua vel per Attorn' suum ad ejus peti-
 'tionem hujusmodi persona sic premonit' tunc
 '& ibid' sic solemnit' exact' & in propria per-
 'sona sua comper' ac cogn' se tempore hujus-
 'modi Attach' fact' habuisse debuisse acq; deti-
 'nuisse & ad tunc se habere debere atq; detinere
 'a predicta persona in Billa Original' defend'
 'nominat' pecunie summam in manibus suis sic
 'Attach', Idemq; Quer' in propria persona
 'sua

' sua vel per Attorn' suum ad tunc & ibid' juravit,
 ' debm' suum predict' in tali Billa Original' peti-
 ' tunc talis Quer' per Cons' Cur' illius haberet &
 ' a toto tempore supradicto habere consuevit exe-
 ' cutionem de huiusmodi summa sic ut prefer-
 ' tur Attach' in satisfactione debiti in tali Billa
 ' Original' spec' aut tantum parcell' inde quan-
 ' tum eadem summa sic Attach', &c. se extend'
 ' per duos pleg' ad minus per ipsum Quer' in
 ' eadem Cur' inveniend' ad huiusmodi sum-
 ' mam sic Attach' & in executione habit' resti-
 ' tuend' huiusmodi defend' si idem Def' infra
 ' unum Annum & unum diem tunc prox' se-
 ' quen' secund' cons' Civitatis predict' ibidem
 ' ven' & districtionaver' debitum predictum in
 ' predict' Billa Original' content', &c.
 ' Et qd' post huiusmodi pleg', &c. invent' &
 ' execution' de huiusmodi summa sic in mani-
 ' bus & custod' huiusmodi alterius persone
 ' Attach' & defend' pro Quer' in eadem Billa
 ' Original' nominat' habit' huiusmodi altera
 ' persona in cuius man' & custod', &c. exo-
 ' neretur versus huiusmodi Def' de dicta sum-
 ' ma sic ut prefertur Attach', Et unde execu-
 ' tio sic habetur, Et talis defend' in tali Billa
 ' Original' nominat' similiter exoneretur versus
 ' talem Quer' de tanta summa debiti sui in tali
 ' original' per ipsum Quer' petit' tamdiu quam
 ' huiusmodi iudicium & executio in suis robore
 ' permaneret & effectu per talem Def' mi-
 ' nime revocat' seu districtionat', Et si huius-
 ' modi denar' summa sic Attach' & defens' &
 ' unde executio sic habetur non atting' ad in-
 ' tegram summam debiti in predicta Billa Ori-
 ' ginal' per talem Quer' versus talem Def' in
 ' Cur' ill' petit' tunc talis Quer' per Cons'
 ' Cur' illius haberet & a toto tempore supra-
 ' dicto habere consuevit processum versus talem
 ' Def' secund' consuetud' Civitatis predict' pro
 ' resid'

resid' debiti sui predict' per ipsum in tal'
 Billa Original' petit', Et idem H. ulterius
 dic' qd' predict' consuetudo & omnes al'
 consuetud' Civitatis pred' in eadem Civitate
 a diu usitat' Authoritate Parliamenti Domini
 Richardi quondam Regis Anglie secund'
 post Conquestum Anno Regni sui septimo
 apud Westm' in Com' Midd' tunc Majori
 & Communitat' dict' Civitatis & Successo-
 ribus suis ratificat' & confirmat' fuer', Et
 idem Des' ulterius dic' qd' quidam J. J. de
 London Mercator' ante diem impetrationis
 Brevis Original' prefat' W. L. scilt' decimo
 octavo die Martii Anno Regni dicti Domini
 Regis nunc vicesimo in propria persona sua
 ven' in Cur' dict' Domini Regis nunc coram
 J. S. tunc Majore predict' Civitatis & ejus-
 dem Civitatis tunc Aldermannis in predicta
 Camera Guihald' Civitatis predict' scituat' in
 Paroch' sancti Michaelis Bassishawe in Warda
 de Bassishawe London predict' secund' cons'
 Civitatis predict' tent' & adtunc & ibid' in
 eadem Cur' per nomen J. J. de London Mer-
 cator' affirmavit quandam Billam Original'
 Debiti super demand' duarum mille librarum
 legalis monet' Anglie versus predict' W. L.
 Civem & Haberdasher London cujus quidem
 Bille Originalis tenor' sequitur in hec verba,
 ff. J. J. de London Mercator' per J. S. At-
 torn' suum pet' versus W. S. Civem & Ha-
 berdasher de London duas mille libris lega-
 lis Monete Anglie quas ei debet & injuste
 detinet, &c. eo qd' 26 die Septembris Anno
 Domini 1668. in Paroch' sancti Sepulchri
 London dict' defend' per quoddam scriptum
 suum Obligatorium sigillo suo sigillat' & hic
 in Cur' prolat' cujus dat' est eisdem die &
 anno obligavit se prefat' Quer' in predict'
 2000 l. solvend' eidem Quer' quo & quan-

Customes
 confirme per
 Act' de Par-
 liament.

That J. J. be-
 fore Plain-
 riffs Original
 Writ, brought
 a Bill in the
 Mayor's
 Court against
 the said W. L.

Narr' super-
 inde per J. J.
 vers' W. L.

Precept to
the Serjeant
to summons
W.

Retorn' Ore
tenus qd' W.
Nihil habuit,
per quod, &c.

do, &c. prout per idem scriptum Obligato-
rium plenius liquet quas dict' defend' predict'
Quer' nondum solvit licet sepius, &c. ad
dampnum dict' Quer' 200l. Et inde produc'
sectam, &c. Et iidem J. J. tunc & ibid' in ea-
dem Cur' secund' consuetudinem Civitat'
predict' inven' Pleg' ad Billam suam Ori-
ginal' prosequend' videlt' J. D. & R. R. &
tunc & ibid' pon' in loco suo J. S. Attorn'
suum versus prefat' W. L. in & super Bill'
Original' illam secund' consuetud' Civitatis
predict', &c. Et per eundem Attorn' suum
adtunc & ibid' idem J. petiit process' ei super-
inde fieri versus prefat' W. L. secund' cons'
ejusdem Civitatis & ei tunc & ibid' concess'
fuit, &c. super quo virtute Bille Original'
predict' ad petition' predict' J. J. per tunc
Attorn' suum predict' fact' precept' fuit
auretenus tunc & ibid' per Cur' ill' secund'
cons' dict' Civit' E. A. tunc servien' dicto-
rum Majoris & Aldermanorum ad arma ac
ministro Cur' predict' qd' ipse sum' per bo-
nos sum' dictum W. essend' ad eandem Cur'
dicti Domini Regis eodem decimo octavo die
Martii Anno 20. supradicto coram prefat'
Majore & Aldermannis in predict' Camera
Guihald' Civitatis predict' secund' cons' dict'
Civitatis tent' ad respondend' prefat' J. de &
in placito predict' spec', Et idem dies dat'
fuit adtunc & ibid' per eandem Cur' eidem
J. in eodem placito, &c. super quo postea
scilt' ad eandem Cur' dicti Domini Regis co-
ram prefat' Majore & Aldermannis in dicta
Camera Guihald' decimo octavo die Martii
Anno 20. supradicto secund' cons' Civitatis
predict' tent' idem tunc servien' ad arma ac
minister' Cur' pred' tunc & ibid' oretenus
retorn' & certificavit eidem Cur' qd' predict'
W. nichil habuit infra libertatem Civitatis
predict'

' predict', &c. per quod aut ubi sum' potuit
 ' nec fuit invent' infra eandem libertat' Civi-
 ' tatis pred', &c. Et pred' W. adtunc & ibm'
 ' ad eandem Cur' exact' fuit & non comperuit
 ' sed defalt' fecit, &c. Et super hoc postea ad
 ' eandem Cur' pred' J. per tunc Attorn' suum
 ' pred' adtunc & ibm' in eadem Cur' testifi-
 ' cavit & notificavit eidem Cur' qd' pred'
 ' Def' per nomen, &c. tunc fuit indebitat'
 ' prefat' W. in trigint' & tribus libris & easdem
 ' trigint' & tres libras in manibus & custod' suis
 ' tunc habuit & prefat' W. detinuit, Et idem
 ' J. adtunc & ibm' per tunc Attorn' suum pred'
 ' petiit ab eadem Cur' qd' per eandem Cur'
 ' precipitur oretenus prefat' servien' ad arma
 ' ac Ministr' Cur' predict' qd' ipse secund' cons'
 ' Civitat' pred', pred' W. per easdem 33 l. in
 ' manibus & custod' ipsius Def' ut presertur
 ' tunc existen' secund' cons' dicte Civitat' at-
 ' tachiaret, Et qd' ipse summam illam in ma-
 ' nibus & custod' ipsius Def' existen' se-
 ' cund' cons' dicte Civitatis defenderet, Ita
 ' qd' pred' W. esset ad prox' Cur' dicti Do-
 ' mini Regis nunc coram prefat' Majore & Al-
 ' dermannis in predicta Camera Guihald' Civi-
 ' tatis pred' secund' cons' Civitatis pred' te-
 ' nend' ad respondend' prefat' J. de & in pla-
 ' cito in Bill' Original' sua pred' spec', super
 ' quo adtunc & ibm' ad petitionem ejusdem
 ' J. per tunc Attorn' suum pred' eidem Cur'
 ' ut presertur fact' precept' fuit oretenus per
 ' Cur' ill' prefat' tunc servien' ad arma ac
 ' Ministr' Cur' illius qd' ipse secund' cons' Civi-
 ' tatis pred' predictum W. per pred' 33 l. in ma-
 ' nibus & custod' ipsius Def' existen' Attach' &
 ' qd' ipse easdem 33 l. in manibus & custod' ip-
 ' sius Def' secund' cons' Civitat' pred' defender',
 ' Ita qd' pred' W. esset ad prox' Cur' dicti Do-
 ' mini Regis nunc in pred' Camera Guihald' Ci-
 ' vitatis

Information
 given, That
 Defendant
 was indebted
 to W.

Process to
 attach W. by
 the Money in
 Defendant's
 Hands.

Attachment
retorn'd.

W. makes a
Default.

' vitatis pred' coram prefat' Majore & Alder.
 ' mannis 19 die Martii Anno 20. supradicto se-
 ' cund' cons' Civitatis pred' tenend' ad respon-
 ' dend' prefat' J. de & in placito in Billa Origi-
 ' nal' sua predicta spec', Et quid idem tunc ser-
 ' vien' ad arma superinde faceret eidem Cur'
 ' tunc rectificaret, &c. Et idem dies dat' fuit
 ' tunc & ibm' per eandem Cur' prefat' J. in
 ' eodem placito, &c. Ad quem diem scilt' ad
 ' dictam Cur' dicti Domini Regis coram pre-
 ' fat' tunc Majore & Aldermannis in predict'
 ' Camera Guihald' Civitatis pred' pred' decimo
 ' nono die Marcii Anno 20. supradicto secund'
 ' cons' Civitat' pred' tent' pred' J. per tunc
 ' Attorn' suum pred' ven' & comperuit, &c. Et
 ' predict' servien' ad arma tunc & ibm' orete-
 ' nus retornavit & certificavit eidem Cur' qd'
 ' ipse decimo nono die Marcii Anno 20. su-
 ' pradicto virtute precepti pred' predictum W.
 ' per predictas 33 l. in manibus & custod'
 ' ejusdem H. Def' tunc existen' secund' cons'
 ' Civitat' pred' attachiasset & eandem 33 l. sic
 ' in manibus & custod' ipsius H. Def' existen'
 ' secund' cons' dicte Civitatis tunc defendisset,
 ' Ita qd' idem W. esset tunc ibm' ad eandem
 ' Cur' ad respondend' prefat' J. de in placito
 ' in Billa Original' sua pred' spec' prout ei su-
 ' petius precept' fuerat, super quo in eadem
 ' Cur' dicti Domini Regis coram prefat' tunc
 ' Majore & Aldermannis in predict' Camera
 ' Guihald' Civitatis pred' 19 die Marcii Anno
 ' 20. supradicto secund' cons' Civitatis pred'
 ' tent' pred' J. per tunc Attorn' suum op' se
 ' versus prefat' W. de & in placito in Billa
 ' Original' pred' spec' secund' cons' Civitatis
 ' pred', Et pred' W. ad petitionem predict'
 ' J. per tunc Attorn' suum pred' tunc & ibm'
 ' fact' ad eandem Cur' solempnit' exact' fuit
 ' & non comperuit sed primam tunc & ibm'
 ' sec'

by Forein Attachment.

267

' fec' defalt' que quidem prima defalt' super
 ' eundem W. ad Cur' ill' in placito in Billa
 ' Original' predict' secund' cons' Civitatis pre-
 ' dict' recordat' fuit, &c. Et super hoc tunc &
 ' ibm' secund' cons' Civitat' predict' dies dat'
 ' fuit per eandem Cur' eidem W. usq; ad
 ' prox' Cur' dicti Domini Regis coram pre-
 ' fat' Majore & Aldermannis in predicta Ca-
 ' mera Guihald' Civitatis predict' scilt' 20 die
 ' predict' mensis Marcii Anno 20. supradicto
 ' secund' cons' Civitatis predict', Et idem dies
 ' tunc & ibm' per Cur' ill' dat' fuit prefat' J.
 ' in eodem placito, &c. Ad quam quidem
 ' prox' Cur' dicti Domini Regis nunc coram
 ' prefat' Majore & Aldermannis in predict'
 ' Camera Guihald' Civitatis predict', predict'
 ' 20 die Marcii Anno 20 supradicto secund'
 ' cons' Civitatis predict' tent' predict' J. per
 ' tunc Attorn' suum predictum comperuit &
 ' tunc & ibm' in eadem Cur' op' se versus
 ' prefat' W. de & in predicto placito in Billa
 ' Original' predict' spec' secund' cons' Civitat'
 ' predict', Et predict' W. ad petitionem pre-
 ' dict' J. per tunc Attorn' suum predict' tunc
 ' & ibm' fact' tunc & ibm' in eadem Cur'
 ' solempnit' exact' fuit & non comperuit sed ad-
 ' tunc & ibm' secundam fec' defalt' que qui-
 ' dem secunda defalt' per eundem W. ad Cur'
 ' ill' in placito in Billa Original' predict' re-
 ' cordat', &c. Et super hoc tunc & ibm' se-
 ' cund' consuetudinem Civitatis predict' dies
 ' ulterius dat' fuit per eandem Cur' prefat' W.
 ' usque prox' Cur' dicti Domini Regis nunc
 ' coram prefat' Majore & Aldermannis in pre-
 ' dict' Camera Guihald' Civitat' predict' scilt'
 ' vicesimo secundo die predict' mensis Marcii
 ' Anno 20. supradicto secund' cons' Civitat'
 ' predict', &c. Idem dies tunc & ibm' dat'
 ' fuit per eandem Cur' prefat' J. in eodem pla-
 ' cito,

Further Day
given to the
Parties.

W. makes a
second De-
fault, and a
further Day
is given.

*W. makes a
third Default.*

*Fourth De-
fault made.*

*Scire Facias
against De-
fendant.*

cito, &c. Ad quam quidem prox' Cur' dicti
 Domini Regis nunc in Camera Guihald' Ci-
 vitat' predict' coram prefat' tunc Majore &
 Aldermanis predict' 22 die Marcii Anno 20.
 supradicto secund' cons' Civitat' predict'
 tent' predict' J. per tunc Attorn' suum pre-
 dictum comperuit & tunc & ibm' in eadem
 Cur' op' se versus prefat' W. de & in predicto
 placito in Billa Original' pred' spec' secund'
 cons' Civitatis predict', Et predict' W. ad-
 tunc & ibm' ad petitionem predict' J. per
 tunc Attorn' suum predict' tunc & ibm' fact'
 in eadem Cur' solempnit' exact' fuit & non
 comperuit sed tertiam tunc & ibm' fec' default'
 que quidem tertia default' super eundem W.
 ad Cur' ill' in placito in Billa Original' pre-
 dict' spec' secund' cons' Civitat' predict' re-
 cordat' fuit, &c. Et super hoc, &c. (ut supra
 usque Quartam default'), Que quidem quarta
 default' ad Cur' ill' in placito Bill' Original'
 predict' spec' secund' cons' Civit' predict'
 recordat' fuit, &c. Et idem W. seipsum per
 Attachiamen' forinsecum predict' secund'
 consuetud' Civitatis predict' Justiciar' non
 permisit, post quas quidem quatuor' default' sic
 ut prefertur secund' cons' Civitat' predict'
 in forma predict' super predictum W. recor-
 dat' videlt' ad predict' Cur' dicti Domini
 Regis nunc predicto 24 die Marcii Anno 20.
 supradicto coram prefat' tunc Majore &
 Aldermannis in predict' Camera Guihald' Ci-
 vitatis predict' ut prefertur tent' ad petiti-
 onem predict' J. per tunc Attorn' suum pred'
 eidem Cur' fact' precept' fuit oretenus per
 eandem Cur' prefat' tunc servien' ad arma
 qd' ipse secund' consuetudinem ejusdem Ci-
 vitatis premonir' & Scire Fac' prefat' H. Def'
 essend' ad Cur' dicti Domini Regis nunc
 in Camera Guihald' Civitatis predict' co-
 ram

ram prefat' Majore & Aldermannis 26 die
 predict' mensis Marcii Anno 20 supradicto
 secund' cons' Civitatis predict' tenend' ad
 ostendend' & demonstrand' si quid pro se
 haberet aut dicere sciret quare predictus J.
 execution' de predict' 33 l. in manibus & cu-
 stod' ipsius H. Def' in forma predict' Attach'
 & defens', &c. habere non deberet secund'
 cons' predict' si &c. Et quid idem tunc ser-
 viens' ad arma tunc inde faceret eidem tunc
 Cur' certificaret, Et idem dies tunc & ibm'
 dat' fuit per eandem Cur' eidem J. essend'
 ibm', &c. Ad quam quidem Cur' dicti Do-
 mini Regis tunc tent' dicto 26 die Marcii
 Anno 20 supradicto coram prefat' tunc Ma-
 jore & Aldermannis in predict' Camera Gui-
 hald' Civitatis predict' secund' consuetud'
 ejusdem Civitat' predict' tent' ven' predict' J.
 per tunc Attorn' suum predict', Et idem
 tunc servien' ad arma retorn' & certificavit
 eidem Cur' qd' ipse virtute precepti ill' sibi
 direct' premon' & Scire fec' prefat' H. Def'
 essend' ibm' in eadem Cur' eodem 26 die
 Marcii prout ei precept' fuit, super quo ad
 petition' predict' J. per tunc Attorn' suum
 predict' tunc & ibm' fact' predict' H. pre-
 monit', &c. tunc & ibm' solempnit' exact' in
 eadem Cur' in propria persona sua comperuit
 & cogn' se tempore Attach' predict' fact' ha-
 buisse atque detinuisse & adhuc & ibm' ha-
 bere debere atque detinere a prefat' W. pre-
 dict' 33 l. in pecuniis numeratis sic ut pre-
 fertur in manibus dicti H. Attach' & defens',
 &c. Super quo predict' J. per Attorn' suum
 predict' adtunc & ibm' in eadem Cur' debi-
 tum suum predict' in Billa Original' predict'
 pet' secund' cons' predict' juravit, Ac tunc
 & ibm' in eadem Cur' pet' execution' de pre-
 dict' 33 l. sic ut prefertur in manibus & cu-
 stod'

*Retorn' of
 Scire Facias.*

*H. Def' ac-
 knowledges
 his Debt to
 W.*

Judgment
against De-
fendant, &c.
upon his
finding Sure-
ties.

Sureties
found by the
said J. to re-
store, if, &c.

Averment of
the Sums.

‘stod’ predict’ H. sic Attach’ & defens’ secund’
‘cons’ Civit’ predict’ sibi adjudicari, &c. Ideo
‘predict’ 26 die Marcii Anno 20. supradicto
‘ad eandem Cur’ tunc & ibm’ tent’ secund’
‘cons’ Civitat’ predict’ Cons’ fuit per eandem
‘Cur’ qd’ predict’ J. haberet execution’ de
‘predict’ 33 l. sic ut prefertur superius Attach’
‘per duos pleg’ ad minus in eadem Cur’ secund’
‘cons’ Civitat’ predict’ per ipsum J. inve-
‘niend’ ad restituend’ predict’ W. eadem
‘33 l. sic Attach’, &c. si ipse idem W. infra
‘unum Annum & unum Mensem tunc prox’
‘sequen’ secund’ cons’ Civitat’ predict’ ibm’
‘veniret & disrationaret debitum predictum in
‘predicta Billa Original’ predict’ J. content’
‘&c. Ac qd’ idem J. haberet process’ versus
‘predict’ W. pro resid’ debiti predict’ in Billa
‘Original’ spec’, &c. super quo predict’ J. ad
‘Cur’ ill’ coram prefat’ Majore & Aldermannis
‘in predict’ Camera Guihald’ Civitat’ predict’
‘predicto 26 die Marcii Anno 20. supradicto
‘secund’ cons’ Civit’ predict’ juxta tenorem
‘judicii predict’ inde reddit’ & secund’ cons’
‘predict’ inven’ sufficien’ pleg’ videlt’ T. H.
‘& E. W. Mercatores scissor’ Cives London
‘ad restituend’ prefat’ W. predict’ 33 l. supe-
‘rius Attach’ in forma predict’ si, &c. Et super
‘quo ad tunc & ibm’ in eadem Cur’ predict’
‘J per cons’ ejusdem Cur’ habuit executio-
‘nem de predict’ 33 l. sic ut prefertur, &c. se-
‘cund’ tenorem & demand’ Judicii inde red-
‘dit’ & secund’ cons’ Civit’ predict’, &c. Et
‘idem J. inde cogn’ ad tunc & ibm’ in eadem
‘Cur’ se satisfact’ fuisse, &c. prout coram pre-
‘fat’ Majore & Aldermannis in predict’ Ca-
‘mera Guihald’ Civitatis predict’ liquet de Re-
‘cordo, Et idem H. Def’ dic’ qd’ predict’ 33 l.
‘ad sectam predict’ J. J. in forma predict’ At-
‘tach’ & defens’ & in manibus ipsius H. re-
‘cuperat’

'cuperat' & in executionem habit secund'
'cons' ejusdem Civitat' predict' & predict'
'33 l. in indors' scripti Obligator' predict'
'spec' sunt un' eedem 33 l. & non al' neque
'diverse, Et qd' predict' H. in Bill' Original' And of the
'& attach' predict' premonit' & nominat' & Persons.

'pred' H. Mercator' modo hic in Brevi &
'Narr' pred' defend' nominat' est un' & eadem
'persona & non alia neque diversa, qd' q; pre-
'dict' W. L. Civis & Haberdasher London in
'Bill' Original' pred' ad sectam pred' J. pro-
'secut' nominat' Def' & pred' W. L. modo
'hic in Brevi & Narr' sua pred' nominat'
'Quer' est un' & eadem persona & non alia
'neque diversa & qd' judicium & executio
'pred' adhuc in suo robore perman' & effectu And of the
'per presat' E. minime revocat' seu distracionat', Effect of the
'Et hoc idem J. parat' est verificare, Unde Judgment.

'petit' judicium si pred' W. L. Actionem suam
'predictam inde versus eum habere seu manu-
'tenere debeat, &c. Vide Thompson's Ent. 160.
And *quære*, Wherefore the Minister of the
Court is in this Precedent named *Serviens ad*
Arma; and all others, both as to the Mayor's
Court, and Sheriffs Court, is named *Serviens*
ad Clavam?

'See Bar per Forein Attachment in Cur'
'Majoris London, Repl' qd' Consuetudo est
'aliter quam Def' allegavit, Et qd' ipse non
'fuit indebitat', Issue sur Custom & Certio-
'rari inde agard, *Rast. Ent. 157. Vide Thomps.*
'*Ent. 177.* Repl' qd' non habetur talis Cons',
'& Tryal de ceo per Custom certifie ore te-
'nus, Et ut patet in Schedul'.

See a like Sort of Precedent in *Vidian's En-*
tries 168, &c. but it seems, and is there ob-
serv'd, to be imperfect.

*Bar per Attach' in Cur' Vic' London, (Sancti
Custome Specialiter placitat.)*

Bar.

**Plaint' Levy
vers' E. A.**

Precept'.

**Retorn' qd'
Forinsecus &
nihil habuit.**

ET predict' J. F. Ven' & dic' qd' actionem
non, Quia dic' qd' die Mercur' Septimo
die J. Anno Regni Domini Regis nunc 17. in
computario, H. D. tunc un' vic' London
Scituat' in paroch' S. M. Pulteria Civitat'
predict' coram eodem vic', J. P. de B. & T. Y.
de H. Mercatores levaverunt quandam quere-
lam debiti secundm' cons' Civitat' illius versus
prefat' F. A. per nomen F. A. modo quo se-
quitur: F. A. de L. sequitur versus, J. P. de
B. & T. Y. de H. Mercatores in placito debet'
super demand' 58 l. pleg' de pros', &c. Vir-
tute cujus quidem querele Precept' fuit ad tunc
& ibidem per prefat' nuper Vic' cuidam, R. S.
un' servientiu' ejusdem Vic' ad clavam, qd'
sum' per bonos sum' prefat' F. A. essend' ad
Cur' Domini Regis ad Guihald' Civitatis pre-
dict' coram eodem Vic' tenend' die Sabbati
prox' post Festum, &c. tunc prox' futur' ad
respondend' predictis J. P. & T. ibidem, Ad
quem diem ad Cur' Domini Regis coram pre-
dict' nuper Vic' apud Guihald' predict' tent',
predict' J. P. & T. Y. per Attorn' suum op' se
versus prefat' F. A. de eodem placito, Et ipse
non ven', &c. Et predict' serviens retornavit
ad tunc & ibidem qd' predict' F. A. forinsecus
fuit & nichil habuit infra libertatem Civitatis
predict' ubi sum' potuit. Et pro eo qd' ad tunc
& ibidem testatum fuit & datum fuit intelligi
Cur' predict', per J. A. Attorn' dictorum
J. P. & T. Y. qd' W. O. ac prefat' J. F. & T. P.
ad tunc indebitat' fuer' & debuer' prefat' F. A.
34 l. Sterl', Ideo ad petit' dict' J. A. Atorn'
dictorum J. P. & T. Y. ad tunc ibidem per
predict'

' predict' vic' secundum cons' Civit' predict' pre-
 ' cept' fuit prefat' R. S. servien' predict' nuper
 ' vic' ad clavam qd' defenderit & attachiaret
 ' 34 l. in manibus predict' W. O. J. F. & T. P.
 ' Ita qd' ipsi iidem W. O. J. F. & T. P. prefat'
 ' J. P. & T. Y. inde responderent post quatuor
 ' defalt' super prefat' F. A. in querela predict'
 ' secundum cons' Civitat' predict' per prefat'
 ' nuper vic' recordat', nisi ipsi W. O. J. F. & T. P.
 ' cum premoniti essent secundum cons' Civit'
 ' predict' aliquid dicere seu monstrare scirent
 ' quare predict' J. P. & T. Y. executionem de
 ' predict' 34 l. in manibus predict' W. O. J. F.
 ' & T. P. cum premoniti essent secundum
 ' cons' Civit' predict' aliquid dicere seu mon-
 ' strare scirent quare predict' J. P. & T. Y.
 ' executionem de predict' 34 l. in manibus
 ' predict' W. O. J. F. & T. P. sic defens' hic
 ' habere non deberent virtute cujus quidem
 ' precepti prefat' R. S. serviens, &c. postea
 ' predict' die Sabbati prox', &c. Anno supra-
 ' dicto defend' & Attach' predict' 34 l. in
 ' manibus predict' W. O. &c. Ita qd' ipsi
 ' iidem W. O. &c. post quartam defalt' super
 ' prefat' F. A. per prefat' nuper vic' secundum
 ' cons' Civit' predict' in querela predict' re-
 ' cordat' prefat' J. P. & T. Y. de dictis 34 l.
 ' respond' nisi ipsi predict' W. O. &c. cum
 ' premonit' essent secundum cons' Civitat'
 ' predict', aliquid dicerent seu monstrarent,
 ' quare predict' J. P. & T. Y. executionem
 ' de predict' 34 l. habere non deberent Et
 ' quia in Cur' Domini Regis apud Guihald'
 ' Civit' predict', coram eodem vic' tent' die
 ' Sabbati prox' post Festu', &c. Anno su-
 ' pradieto predict' J. P. & T. Y. per dictu'
 ' J. A. Attorn' suum in querela predict' com-
 ' peruer', Et predict' F. A. secundum cons'
 ' Civitat'

Attachment
 in the Deb-
 tors Hands.

1. Default.

‘ Civitat’ predict’ in querela predict’ exactus
 ‘ fuit & non comperuit sed defalt’ fecit, nec
 ‘ non ad Curiam Domini Regis apud Guihald’
 ‘ predict’ coram eodem vic’ tent’ die Jovis
 ‘ prox’ post Festum, (&c.) Anno supradicto
 ‘ dict’ J. P. & T. Y. per predict’ J. A. Attorn’
 ‘ suum comperuer’ super querela predict’ Et

2. Default.

‘ predict’ F. A. secundum cons’ Civit’ pre-
 ‘ dict’ in querela predict’ exactus fuit & non
 ‘ comperuit sed defalt’ fecit, acetiam ad Cur’
 ‘ Domini Regis apud Guihald’ predict’ tent’
 ‘ (tali die, &c.) Anno predict’ coram prefat’
 ‘ nuper vic’, predict’ J. P. & T. Y. per
 ‘ predict’ J. A. Attorn’ suum comperuer’ super
 ‘ querela predict’, Et predict’ F. A. in que-
 ‘ rela predict’ secundum cons’ Civit’ predict’

3. Default.

‘ exactus fuit, & non comperuit sed defalt’ fecit
 ‘ & similiter ad Curiam Domini Regis apud
 ‘ Guihald’ predict’ coram eodam vic’ tent’ die
 ‘ Jovis prox’, (&c.) Anno supradict’ pred’ J. P.
 ‘ & T. Y. per predict’ J. A. Attorn’ suum com-
 ‘ peruer’ in querela predicta, Et predict’ F. A.

4. Default.

‘ secundum cons’ Civitat’ predict’ in que-
 ‘ rela predict’ exactus fuit & non comperuit,
 ‘ sed defalt’ fecit. Ideo secundum cons’ Civit’
 ‘ predict’ ad instanciam & petitionem predict’
 ‘ J. A. Attorn’ dictorum J. P. & T. Y. in que-
 ‘ rela predict’ adtunc & ibidem per prefat’
 ‘ nuper vic’ precept’ fuit prefat’ R. S. servienti

Scire fac’.

‘ nuper dict’ vic’, qd’ ipse premuniret & Scire
 ‘ faceret eisdem W. O. J. F. & T. P. essend’
 ‘ ad Cur’ Domini Regis apud Guihald’ pre-
 ‘ dict’ coram eodem nuper vic’ die Sabbati
 ‘ prox’, (&c.) tenend’ Anno supradict’, ad
 ‘ ostendend’ & demonstrand’ quare predict’
 ‘ J. P. & T. Y. executionem de predict’ 34
 ‘ in manibus ipsorum W. &c. defens’ habere
 ‘ non deberet. Ad quem diem predict’ J. P.

‘ &

& T. Y. per predict' J. A. Attorn' suum
comperuer' & op' se versus predictos W. O.
J. F. & T. P. secundum cons' antedictam,
&c. Et predict' R. S. retornavit qd' ipse Scir'
fec' p'fat' W. O. (&c.) essend' ad Cur'
tenend' predict' die Sabbati coram eodem
nuper vic' apud Guihald' predict' ad ostend'
& demonstrand' si quid pro se haberent aut
dicere scirent quare predict' J. P. & T. Y.
executionem versus eosdem W. O. &c. de
predict' 34 l. in manibus predict' W. O. &c.
defens' virtute querel' predict' habere non
deberent, prout ei precept' fuit. Ad quem
diem predict' W. O. &c. secundum cons'
Civitatis predict' exact' fuer' & non com-
peruer' sed default' fecer' Io' cons' fuit per
Cur' predict' qd' predict' J. P. & T. Y.
haberent executionem de predict' 34 l. in
manibus predict' W. O. &c. secundum cons'
Civit' predict' defens' Et predict' W. O.
J. F. & T. P. obtuler' predict' 34 l. in Cur'
predict', Et predict' 34 l. fuer' per Cur'
predict' liberat' predict' J. P. & T. Y. per
pleg' J. S. & W. D. ad inde respondend' pre-
fat' F. A. si ipse infra Annum & diem veniret
& verificaret secundum cons' Civit' predict', qd'
predict' J. P. & T. Y. actionem suam predict'
versus eum manutenere non deberent &
idem J. F. dic' qd' eadem 34 l. versus
eosdem W. O. &c. in forma predict' recu-
perare, sunt eadem 34 l. in predict' scripto
obligatorio content', quodq; p'fat' F. A.
infra Annum & diem non ven' & verificavit
secundum cons' Civit' predict' qd' predict'
J. P. & T. Y. accon' suam predict' versus
eum manutenere non deberent, Et hoc, &c.
Unde petit judic' si acco', &c. Vide Rast. Ent.
158.

Retorn' Scire
fac' : Et les
Dettors non
comparuer,

Judgment sur
default' & le
det' offer et
Court & deli-
ver, &c.

Averment
que est
mesme le det'
&c.

In Cur' Vic'
London.

§. ' Attachiamēt' in Cur' Vic' London
' ad Partem Debiti, & Demurrer inde, ad
' aliam partem Debiti tender & uncore prift'
' & Issue inde. Co. Ent. 139. & vide Dyer
' Eliz. 196.

Simile.

§. ' Debt per Admin' Bar per Attachment
' in Cur' Vic' London in Debo', ver' Ep'um
' Ordinar' & Demurr' inde, Co. Ent. 142. Dyer
' Eliz. fol. 247.

Simile.

§. ' Bar per Forein Attachment in Cur' Vic'
' London, & Pleader de Custome inde. Bro'
' Red' 231. Demurrer inde.

In Cur' Ma-
joris, &c.
Civit' Exon.

§. ' Simile in Cur' Majoris & Ballivorum
' Civit' Exon' & pleade Custome inde. Idem
' Bro. Rediviv' 237.

See the Treatise, intituled, *Privilegia Lon-
dini* 224, 237, &c.

And how this ought to be pleaded as to
the Form of the Custom and Matter of Law.
Idem 206, 207, &c.

Note, The Practicers in London have said,
That the Forien Attachment ought to be
made before any other Action brought for that
Debt.

Also, that a Man may attach Money in his
own Hands, but that it will not bar another
Action, either entred in the Sheriffs Court,
or sued out before against the Creditor; Also
that the Creditors Debt ought to be more
than any other Debt he owed the Plaintiff, &c.

Quære.

Bar al Debt per Statute Ley.

IT may be observed, That the Statutes hereafter mentioned are pleaded before upon Covenants in Indentures, in the Fourth Part of *Instructer Clericalis*, viz.

1. Stat. 13 & 18 Eliz. of making a Lease by a Prebendary, Page 51. Numb. 4.

2. The Statute of Non-residence pleaded in Bar by a Vicar, Pag. 143. Numb. 47.

3. The Stat. 13 Car. 2. for not reading the Common-Prayer, &c. Pag. 147. Numb. 48.

4. That the Plaintiff was a Bankrupt, and that Defendant paid the Money to the Assignees, 154, 157. *bis* Numb. 49.

5. Stat. 32 H. 8. That a Lease made to an Alien is void, &c. Pag. 167. Numb. 52.

6. Stat. 5 Eliz. Concerning a Mariner's Apprentic, &c. Pag. 199. Numb. 64.

Stat. 5 Eliz. That the Father of the Apprentice had not 40 s. *per Annum*, &c. Pag. 202. Numb. 65. Also Bar by the said Statute upon a Bond to perform Covenants in an Indenture of Apprenticeship, pag. 206. *Aliter* pag. 209.

7. The Statute of Composition pleaded for Two Thirds in Number and Value: *Vide* 4 Part, *Instr. Clerical*. fol. 309. *Bar al Debt sur Bill*.

8. The Act *Primo Anne Regine*, for Relief of Poor Prisoners, *Ibid.* fol. 318.

9. The Act 2 *Anne Regine*, to be discharged upon finding a Soldier, *Id.* fol. 324.

10. *Aliter* Statutes pleaded briefly, and Plaintiff acknowledges the Matter pleaded, and prays Judgment, according to the Statute, and has it. *Id.* 334.

11. Stat. 23 Hen. 6. pleaded to Bail Bonds, &c. *Vide hic ante Bar in Debt sur Obl' Vic' & al' Officicar'.*

12. 13 Car. 2. That none should be chosen into Offices, &c. who had not taken the Sacrament within one Year before such Choice. *Vide ante, Bar in Debt sur Amerciament.*

Next, I will give you a Precedent of the Act for exempting Protestant Dissenters, where the Defendant pleads, He had not taken the Sacrament according to former Acts, &c.

Information.

Bar per 13
Car. 2.

Notice given
to the Mayor.

THE Information was, 4 Will. & Marie, for that the Defendant being chosen Sheriff for the City of *Norwich*, would not take the Oaths, &c. to qualifie him for the Office, nor would take upon him the said Office. *Clift.* fol. 404. Numb. 28. *Idem* fol. 406. Defendant pleads the Stat. 13 Car. 2. to disable such Persons to be chosen into Offices who had not taken the Sacrament within one Year before such Choice; and then pleads, That he was a Protestant Dissenter, and had given the Mayor, &c. Notice that he had not taken the Sacrament, &c. but avers that he had taken the Oath *Primo W. & M.* and had subscribed the Declaration in 30 Car. 2. to prevent Papists from sitting in either House of Parliament, &c.

Upon this Plea, it is observed in the Margent, fol. 407. *viz. Actus pro exemptione Protestant*

*testant' Subditorum a penis quarundum Legum hic imponi debuit ut aliqui dicunt. Again, Locum Observati-
dissentendi allegasse debuit ut dicit quidam Eruditus, ons.
alius tamen contradicit, Idem 407.*

Then, fol. 408. numb. 28. the Attorney-General replies, That the Defendant, as a Rep.
Member of the Church of England, ought to have taken the Sacrament *Annuatim & quolibet Anno*, and that he ought not to excuse himself thro' his own Default: Then the Defendant, by Rejoinder, numb. 29. pro- Rejo.
testando, That he ought not to have taken the Sacrament *Annuatim & quolibet Anno*. Pro Placito pleads the Act for exempting Protestant Dissenters. The Attorney-General demurrs to Demurr.
the Rejoinder, fol. 409. and the Defendant joins in Demurrer. Id. fol. 410. numb. 27.
Note, These Numbers are misnumbred.

Again: Afterwards at fol. 410. numb. 28. A Plea is entred for the Defendant to the Information, *protestando* that the Information is insufficient; pro Placito pleads the 13 Car. 2. as before, fol. 412. The Attorney-General replies as before, numb. 29. and numb. 30. The Defendant, by Rejoinder, pleads the Act as follows:

The Act for exempting Protestant Dissenters, pleaded by Way of Rejoinder to an Information.

'ET predict' T. L. dic' qd' per quendum Rejoinder
'**E**a ctum in Parlamento dictorum Domini
'Regis & Domine Regine nunc intitulat, (*An*
'*Act for exempting their Majesty's Protestant Sub-*
'*jects dissenting from the Church of England,*
'*from the Penalties of certain Laws*) apud Westm'

By Statute W.
& M. recit-
ing the fol-
lowing Acts.

23 Eliz. Of
due Obedi-
ence.

29 Eliz.

1 Eliz. For
Uniformity.

3 Jac. 1. a-
gainst Popish
Recusants.

in Com' Midd' tercio decimo die Februarij
Anno Regni sui primo tent' edit' & provis'
recitan' qd' pro eo qd' aliquod levamen
(Anglice *Ease*) ad scrupulosas conscientias
in exercitio religionis esse posset effectualis
modus (Anglice *Means*) unire Protestantes
subditos dict' Domini Regis & Domine Re-
gine in interesse (Anglice *Interest*) & affecti-
one inactitat' fuit autoritate ejusdem Par-
liamenti inter alia qd' nec Statutum factum
in vicesimo tertio anno Regni nuper Regine
Elizabethhe intitulat', (*An Act to retain the
Queen's Majesty's Subjects in their due Obedience,*)
nec Statutum factum in vicesimo nono anno
dict' Regine intitulat', (*An Act for the more
speedy and due Execution of certain Branches
of the Statute made in the Three and twenti-
eth Year of the Queen's Majesty's Reign,*)
nec illa Clausula, (Anglice *that Branch*)
vel Clausula, (Anglice *Clause*) Statuti fact'
in primo anno regni dic' Regine intitulat',
(*An Act for the Uniformity of Common-Prayer
and Service in the Church, and Administration
of the Sacraments*) per quam omnes persone
habentes nullum litimam sive r'onabilem
excusationem fore absentes requisit' fuerunt
convenire, (Anglice *to resort*) sue parochiali
Ecclie' sive Capelle vel alicui usuali loco ubi
Commun' Preces, (Anglice *the Common-
Prayer*) uteretur sub pena punitionis per cen-
suras Ecclesiasticas ac etiam sub pena quod
qualibet persona sic offendens forisfaceret
pro qualibet tali offensa duodecim denarios
nec Statutum factum in tertio anno Regni
nuper Regis Jacobi primi intitulatum, (*An
Act for the better discovering and repressing Popish
Recusants,*) nec ill' aliud Statutum factum in
eodem anno intitulat', (*An Act to prevent and
avoid Dangers which may grow by Popish Recu-
sants*)

(sants) nec aliqua alia Lex sive Statutum hujus Regni fact' contra Papistas vel Papales Recusantes, (except Statut' Fact' in vicesimo quinto anno Reg' Caroli secundi intitulat', 25 Car. 2.

An Act for preventing Dangers that may grow by Popish Recusants. Aceciam except' Statut' fact' in tricesimo Anno dict' Regis Caroli secundi intit', *An Act for the more effectual preserving the King's Person and Government, by disabling Papists from sitting in either House of Parliament,*) forent construct' (Anglice construed) extendere alicui persone vel personis dissentien' ab Ecclesia Anglicana que caperet seu caperent sacra' mentionat' in predict' Statuto intitulat' quendam Actum pro remocon' & prevention' omnium' question' & disputation' concernen' assemblac' & session' tunc presen' Parliament' Et faceret seu facerent & subscriberet seu subscriberent declaration' mentionat' in Statuto facto in tricesimo anno regni, Regis Caroli secundi intitulat', 30 Car. 2, &c. not to extend to Dissenters who, &c.

(*An Act to prevent Papists from sitting in either House of Parliament*) que sacra' & declarationem Justic' pacis ad generales Sessiones pacis tenend' pro Com' vel loco ubi talis persona viverent, fuerunt per eundem Act' Anno Regni dictor' Domini Regis & Domine Regine nunc primo supradict' edit' & provis' ac modo placitat', requisit' offerre & administrare talibus personis qual' offerrent seipsas capere sacra' & subscribere eadem. Et And should subscribe the Declaration, 30 Car. 2. &c.

per eundem Actum anno Regni dictorum Domini Regis & Domine Regine nunc primo supradicto edit' & provis' ac modo placitat' ulterius inactitat' existit autoritate predict' qd' omnes & quelibet persona & persone que ut prefertur caperent dicta sacra' & facerent & subscriberent Declaration' predict' non

Such Persons not to be liable to Penalties.

Mentioned in
35 Eliz.

And in 22
Car. 2. against
Conventicles.

Averment
that he was,
and is, a Pro-
testant Dis-
senter.

And took the
Oaths.

‘ non foret obnoxia (Anglice *liable*) nec forent
‘ obnoxia (Anglice *liable*) aliquibus penis
‘ penalitatibus vel forisfacturis mentionat’ in
‘ acto facto in tricesimo quinto anno regni nuper
‘ Regine Elizabethæ intitulat’, (An Act to
‘ retain the Queen’s Majesty’s Subjects in their due
‘ Obedience) nec in Acto facto in vicesimo
‘ secundo anno regni nuper Regis Caroli secundi
‘ intitulat’, (An Act to prevent and suppress sedi-
‘ tious Conventicles) nec deberet ulla dicta-
‘ rum personarum fore prosecut’ in aliqua Ec-
‘ clesiastica Cur’ vel pro ratione suarum noncon-
‘ formation’ (Anglice *nonconforming*) ad Eccle-
‘ siam Anglicanam, prout per eundem Actum
‘ anno regni dictorum Domini Regis & Do-
‘ mine Regine nunc primo supradicto edit’ &
‘ provis’ modo placitat’ inter alia plenius ap-
‘ paret Et idem T. L. ut prius dic’ qd’ ipse
‘ est & tempore predict’ electionis ipsius T. L.
‘ in unum Vicecomitem predict’ Civitatis
‘ Norwici & Com’ ejusdem per Informa-
‘ tionem predict’ superius fieri supposit’ & per
‘ spaciū unius anni prox’ ante hujusmodi
‘ electionem ac per diversos annos antea elap-
‘ sos fuit Protestans subditus dictor’ Domini
‘ Regis & Domine Regine nunc ac ut prefer-
‘ tur dissentiens ab Ecclesia Anglicana, Quodq;
‘ ipse idem T. L. ad generalem Sessionem
‘ pacis pro predict’ Civitat’ & Com’ Norwici
‘ predict’ decimo nono die Junij anno regni
‘ dictor’ Domini Regis & Domine Regine
‘ nunc primo apud Guihald’ in & pro Civi-
‘ tate & Com’ predict’ coram tunc Justic’
‘ ipforum Domini Regis & Domine Regine
‘ ad pacem in & pro Civitate & Com’ pre-
‘ dict’ tenend’ assign’ legitime tent’ coram
‘ eisdem Justic’ cepit sacra’ per predict’ Actum
‘ intitulat’ quendam Actum pro remotion’ &
‘ preven-

prevention' omniu' question' & disputation'
 concernen' Assemblationem & Session' tunc
 presentis Parliamenti appunctuat' fore capi-
 end' & fecit & subscripsit' Declarationem men-
 tionat' in predict' al' Actu' in Session' Parlia-
 menti Domini Caroli secundi nuper Regis
 Anglie apud Westm' anno regni sui tricesi-
 mo tent' edit' & provis' intitulat', (*An Act to*
prevent Papists from sitting in either House of
Parliament) quodq; idem T. L. tempore pre-
 dict' generalis Sessionis pacis ut prefertur
 tent' & diu antea & continue extunc hucusq;
 postea fuit inhabitan' & residen' infra Civita-
 tem & Com' Civitatis Norwici predict', Que
 omnia & singula idem T. L. parat' est veri-
 ficare prout Cur', &c. unde idem T. L. ut
 prius pet' Judic' & quod ipse de premissis per
 Cur' habuit dimittatur, &c. Vide *Clift. Ent.*
 412, &c.

And sub-
 scribed the
 Declaration.

And then
 was, and is,
 an Inhabitant
 within the
 said City of
 N.

Bar per Stat. 3 Jac. vers' Attorn' quia non
dedit Billam sub manu ; pleaded against
Attorneys Executrix.

ET predict' Jo. G. per Jo. R. Attorn' suum
 ven' & defend' vim & injur' quando,
 &c. Et dic' qd' predict' S. actionem suam
 predict' versus eum h'ere non debet quia dic'
 qd' per quendam Actum in Parlamento
 Domini Jacobi nuper Regis Anglie &c.
 apud Westm' in Com' Midd' quinto die No-
 vembris Anno Regni sui Anglie, &c. tertio,
 tent' per prorogationem inter alia edit' &
 inactitat' fuit autoritate ejusdem Parliamenti
 qd' nullus Attorn' Sollicitator vel serviens
 forent allocat' a Cliente vel magistro suo de
 vel pro aliquo feodo dat' alicui servienti
 vel

Bar?

3 Jac. c. 3.

Vouchers under Councils Hand.

To give a true Bill under Attorney's Hand.

Protestando, he was not so indebted: Pro placito, he had no Bill given under Testator's Hand.

Aliter.

‘ vel Consiliar’ ad legem seu de vel pro aliqui-
 ‘ bus summa vel summis pecunie dat’ pro co-
 ‘ piis alicui vel aliquibus Clerico vel Clericis sive
 ‘ officiar’ in aliqua vel aliquibus Curia vel
 ‘ Curiis de Recordo apud Westm’ nisi haberet
 ‘ notam (Anglice, a Ticket) subscript’ sub
 ‘ manu & nomine eorundum servient’ vel
 ‘ Consiliar’ Clerici vel Clericorum sive Offi-
 ‘ ciar’ predict’ testan’ quantum ipse recepit pro
 ‘ feodo suo vel dedit aut solvit pro copiis & ad
 ‘ quod tempus & quoties, & qd’ omnes Attorn’
 ‘ & Sollicitor’ darent veram Billam eorum
 ‘ Magistris vel Client’ vel Assign’ suis de omni-
 ‘ bus aliis oneribus concernen’ sectas suas quas
 ‘ haberent pro eis subscript’ cum propria manu
 ‘ & nomine, antequam ipsi vel eorum aliquis
 ‘ onerarent Client’ suos cum aliquibus hujus-
 ‘ modi feodis vel oneribus prout per eundem
 ‘ actum inter alia plenius apparet. Et idem
 ‘ Jo. G. protestando qd’ ipse predict’ Jo. non fuit
 ‘ indebitat’ predict’ R. C. Testator’ in vita
 ‘ sua in predict’ tribus libris quinque solidis &
 ‘ sex denariis pro placito dic’ qd’ nec predict’
 ‘ Ri. C. Testator’ in vita sua nec pred’ S. post
 ‘ mortem predict’ R. ad aliquod tempus dede-
 ‘ runt eidem Jo. Gi. vel assign’ ejus aliquam
 ‘ notam sive billam onerum vel feodorum pre-
 ‘ dictorum in narr’ predict’ superius specificat’
 ‘ concernen’ Sectas in eadem Narratione men-
 ‘ tionat’ subscript’ cum propria manu & no-
 ‘ mine ejusdem Ri. Testatoris secundum for-
 ‘ mam & effectum actus predict’, Et hoc
 ‘ parat’ est verificare unde pet’ Indicium
 ‘ predict’ S. actionem suam predict’ inde-
 ‘ versus eum h’ere debeat’, &c. Vide Clif’s
 ‘ Ent. 197.

‘ See 1 Bro. 265. als’ 365. Quoad part’ non debet
 ‘ per Patriam, and as to the Residue pleads the
 ‘ aforesaid Statute. — ‘ Prou

— ' Prout per eund' Act' inter al' plenius Aliter.
 ' apparet Et idem Def' ulterius dic' qd' pre-
 ' dict' Quer' post retencon' predict' in Narr'
 ' predict' superius fieri supposit' & ante diem
 ' impetrac' brevis Original' ejusdem Quer' non
 ' dedit eidem Def' aliquam billam onerum pred'
 ' in Narracone' predict' superius spec' con-
 ' cernen' Sectam in eadem Narracone' mentio-
 ' nat' subscript' cum manu & nomine ejusdem
 ' Quer' secundm' form' & effect' Statut'
 ' predict' Et hoc parat' est verificare, unde
 ' pet' judic' si Action', &c.

*Bar per Stat. 16 Car. 2. contra Lusum ad
 Aleas, &c.*

ET predict' Rad' per Jo. L. Attorn' suum Oyer.
 ' ven' & defend' vim & injur' quando, &c.
 ' & pet' auditum scripti predict' & ei legitur
 ' in hec verba, Noverint universi, &c. ut in
 ' scripto verbatim, pet' etiam auditum Condi-
 ' tionis ejusdem scripti & ei legitur in hec
 ' verba; (*The Condition of this Obligation is such,*
 ' *That if the above-abounden R. B. and H. or*
 ' *either of them, they, or either of their Heirs,*
 ' *Executors, or any of them, do and shall well*
 ' *and truly pay, or cause to be paid unto the above-*
 ' *named Fra. C. and T. W. or either of them,*
 ' *their, or either of their Heirs, Executors, or*
 ' *Administrators, the full Sum of 230 l. of law-*
 ' *ful English Money, at the Days and Times in*
 ' *manner following, viz. 130 l. part thereof on the*
 ' *Four and twentieth Day of June now next, and*
 ' *the Sum of 100 l. Residue thereof on the Nine*
 ' *and twentieth Day of September now next;*
 ' *That then this present Obligation to be void, or*
 ' *else*

Bar.

else in full force.) Quibus lectis & auditis
 idem R. dic' qd' ipse de debo' predict', vir-
 tute scripti predict' onerari non debet quia
 dic' qd' per quendam Actum in Parlamento
 Domini Caroli secundi nuper Regis Angl',
 &c. apud Westm' in Com' Midd' & decimo
 sexto die Martij Anno Regni sui decimo
 sexto per prorogation' tent' edit' inter alia
 inactitat' fuit autoritate ejusdem Parliamenti
 qd' si aliqua persona vel persone ad aliquod
 tempus vel tempora post vicesimum nonum
 diem Septembris qui tunc foret in Anno
 Domini Millesimo sexcentesimo sexagesimo
 quarto, luderent ad Chartas pictas, (Anglice
Cards) Aleas (Anglice *Dice*) Astragal' (An-
 glice *Tables*) Spheromachias (Anglice *Tennis*)
 Globos (Anglice *Bowles*) Conos (Anglice
Skettles) Mensam Lusoriam (Anglice *Shovel-*
Board) vel ad aliquam al' Lusionem (Anglice
Pastime) Lusum vel Lufos quoscunq; aliter
 quam cum vel pro promptis Pecuniis, (An-
 glice *ready Money*) vel deponerent (Anglice
should bet) super Partes (Anglice *the Sides*) vel
 manus tal' qui ad eundem lusum vel lufos lude-
 rent & perderent aliquam summam sive
 summas pecuniarum seu al' rem vel res sic
 ludend' (Anglice *so played for*) exceden'
 summam Centum librarum ad aliquod unum
 tempus vel convencon' (Anglice *Meeting*)
 super Fiduciam (vocat' *upon Ticket or Credit*)
 vel aliter non solverent (Anglice *pay down*)
 easdem ad tempus (Anglice *at the Time*)
 in quo ille vel illi sic perderent easdem (An-
 glice *the same*) pars & partes (Anglice *the*
Party and Parties) que perderet & perde-
 rent predictas pecunias vel al' rem seu res
 sic lusitat' vel fore lusitat' (Anglice *to be played*
for) supra predict' summam centum librarum

in

in eo casu non forent obligat' sive compuls'
 seu coercibiles (Anglice *compellable*) solvere
 vel reddere (Anglice *to make good*) easdem,
 sed contract' & contract' pro eisdem & pro
 qualibet parte inde ac omnia singula judicia
 Stat' Recognition' Mortgag' (Anglice *Mort-*
gages) conveyancie assuran'ie scripta obliga-
 toria bille obligatorie specialitat' promissiones
 convenc'ones Agreement' & al' act' fact' &
 securitat' quecunq; que obtinerentur fierent
 (Anglice *should be made*) darentur cognosce-
 rentur sive intrarentur (Anglice *should be en-*
tred into) pro securitat' vel satisfaction' de
 vel pro eisdem seu aliqua parte inde penitus
 vacua forent & nullius effectus prout per
 eundem Actum inter alia plenius liquet &
 apparet, Et idem R. ulterius dic' qd' post
 predict' Vicesimum nonum die Septembris
 in eodem Actu mentionat' & ante confecti-
 onem Scripti obligatorii predict' scilt' pre-
 dict' decimo sexto die Novembris Anno
 Regni dict' Domini Regis nunc septimo su-
 pradieto apud M. predict' ipse idem R. &
 predictus F. ludebant cum aleis ad quendam
 lusum, vocat' *Hazard*, & sic ludendo pre-
 dictus Fran'cus adtunc & ibm' lucratur fuit
 (Anglice *did win*) de ipso R. ac idem R.
 ei tunc perdidit ultra summam centum li-
 brarum super fiduciam (Anglice *upon Credit*)
 & non in promptis denariis ad unum &
 idem tempus & conventionem (Anglice
Meeting) videlt' summam ducentaram & tri-
 ginta librarum leg'lis monete Anglie que per
 eundem R. tunc minime solut' fuit, iidemq;
 predictus R. & predictus Joh. adtunc &
 ibm' pro securitate solu'conis predict' ducen-
 tarum triginta librarum per eundem R. sic
 perdit' & per prefat' Fr. de eo sic lucratur super
 fiduciam

Averment of
 their Gam-
 ing.

And Plain-
 riff did win
 of Defendant
 above 100 l.
 at one Meet-
 ing.

And Defen-
dant gave
this Bond for
Credit.

‘ fiduciam predict’ scriptum obligatorium cum
‘ conditione predict’ superius recitat’ ad requi-
‘ sitionem predict’ Fr. & in fiducia pro eodem
‘ Fra. nulla alia de causa fecerunt ac idem Fra.
‘ scriptum illud de predict’ Ra. & Jo. H. ad-
‘ tunc & ibm’ acceptavit, Et hoc parat’ est
‘ verificare unde ex quo scriptum predict’ vi-
‘ gore Statuti predict’ penitus vacuum & nullius
‘ effectus in lege existit idem Ra. pet’ Judici-
‘ um si ipse de debo’ predict’ virtute scripti
‘ pred’ onerari debeat, &c. Vide *Clift’s Ent.*
‘ 187, &c.

Aliter secundum, 1 Lut. Ent. 484, &c.

Upon a Wa-
ger concern-
ing a Cast.

THE Declaration is in Debt, for the Value
of 100 Guineas upon a Wager concerning
a Cast at Back-gammon, of which there was a
Case stated, and the Wager was to be de-
termined by the Groom-Porter, who gave
Judgment for the Plaintiff.

*After Oyer of the Deed, Defendant pleads
the Statute as follows :*

Oyer pray’d
of the Wri-
ting.

‘ ET predict’ Jo. per Ed. H. Attorn’ suum
‘ ven’ & defend’ vim & injur’ quando
‘ &c. Et pet’ audit’ scripti predict’ & e
‘ legitur in hec verba. *ss. I John St. Leger*
‘ of *Donorale*, Esq; do own, That I have
‘ betted with Lieutenant-Colonel Roger Pop
‘ an Hundred Guineas against an Hundred
‘ and fifty, concerning a Dispute arising
‘ on the manner of playing a Cast at Back
‘ gammon, which is stated and signed by
‘ us both, and Captain *Francis Chantrel*, and
‘ referr’d to the Decision of the Groom-Porter

of England: And I do by these Presents oblige myself, on the Word and Honour of a Gentleman, to pay unto the said Roger Pope, or his Order, or whom he appoints to receive it, an Hundred Guineas so soon as the Groom-Porter gives his Judgment on the Case, if it so happen that the Judgment be against me. The Question to the Groom-Porter is stated under the Letters of A. B. and C. John St. Leger is meant by A. and Roger Pope by B. Given under my Hand and Seal the Eighth Day of July, 1691.

Bar by the Statute.

‘ Quibus lectis & audit’ idem
 ‘ Johannes dic’ qd’ ipse de debito predict’ vir-
 ‘ tute scripti predicti onerari non debet quia
 ‘ dic’ qd’ in statuto in Parlamento Domini
 ‘ Caroli secundi nuper Regis Anglie inchoat’
 ‘ apud Westm’ in Com’ Midd’ Octavo die
 ‘ Maij Anno Regni dicti Domini nuper Regis
 ‘ decimo tertio & per diversas Prorogation’ &
 ‘ Adjornament’ ibm’ continuat’ usque decimum
 ‘ sextum die Martij Anno Regni ejusdem nuper
 ‘ Regis decimo Sexto (inter alia) Authoritat’
 ‘ ejusdem Parlamenti ordinat’ & inactitat’
 ‘ fuit qd’ si aliqua persona vel persone ad ali-
 ‘ quod tempus vel tempora Post vicesimum
 ‘ nonum diem Septembris in Anno Domini
 ‘ Millesimo sexcentesimo sexagesimo quarto
 ‘ luderet ad & cum Pictis chartis (Anglice
 ‘ Cards) aleis latrunculis pilis palmariis (An-
 ‘ glice Tennis) globulis (Anglice Bowles) cla-
 ‘ vis ligneis (Anglice Skittles) mensa lubrica
 ‘ (Anglice Shovelboard) vel ad alium lusum
 ‘ (Anglice Pastime) ludum vel ludos quoscun-
 ‘ que (alic’ qm’) cum & pro pecuniis deposit’
 ‘ (Anglice ready Money) vel pigneraretur (An-
 ‘ glice shall bet) ex partibus (Anglice upon the
 ‘ sides) vel super manus eorum qui ludunt vel
 ‘ luderet adinde & perderet aliquam summam

U

vel

Averment of
their Gam-
ing.

And of the
Money bet-
ted.

‘ vel summas monet’ vel aliam rem vel res sic
 ‘ in lufum poit’ (Anglice *play’d for*) exceden’
 ‘ summam centum librarum ad aliquod unum
 ‘ tempus vel congressum super notam (Anglice
 ‘ *upon Tick*) vel credenciam (Anglice *Credit*)
 ‘ vel aliter & non solveret eadem in manibus
 ‘ (Anglice *shall not pay down the same*) ad tem-
 ‘ pus quando ill’ vel illi sic perdent eadem per-
 ‘ sona vel persone qui perdiderunt sive per-
 ‘ diderint dict’ monet’ vel aliam rem sive res
 ‘ sic in lufum poit’ sive ponend’ (Anglice *so*
 ‘ *plaid, or to be play’d for*) ultra summam cen-
 ‘ tum librarum in tali casu non obligabitur seu
 ‘ compelletur vel compellendus erit solvere vel
 ‘ respondere (Anglice *to make good*) eadem
 ‘ sed contractus pro eisdem & pro qualibet
 ‘ parte inde & omnia & singula Judicia statuta
 ‘ Recogn’ (Anglice *Recognizances*) mortgagia
 ‘ (Anglice *Mortgages*) Conveyancie assurancie
 ‘ obligationes (Anglice *Bonds*) Bille Speciali-
 ‘ tates promissiones conventiones agreementa
 ‘ & alia acta facta & securitates quecunq; que
 ‘ erint obtent’ fact’ dat’ cogn’ sive intrat’ (An-
 ‘ glice *entred into*) pro securitat’ vel Satisfaction’
 ‘ eorundem vel pro eisdem vel aliqua parte
 ‘ inde erint vacua & nullius effectus, prout
 ‘ per eundem Actum (inter alia) plenius ap-
 ‘ paret, Et idem Johannes in facto dic’ qd’
 ‘ post vicesimum nonum diem Septembris
 ‘ Anno Domini Millesimo sexcentesimo sexa-
 ‘ gesimo quarto supradicto & ante con-
 ‘ fection’ scripti predict’ scilt’ predict’ octavo
 ‘ die Julij Anno Domini Millesimo sexcentesi-
 ‘ mo nonagesimo primo suprad’ apud paro-
 ‘ chiam predict’ in Com predict’ ipse idem
 ‘ Johannes & predict’ Rogerus ludebant
 ‘ cum aleis ad quendam ludum, vocat’
 ‘ *Back-gammon*, quodq; predict’ centum
 nummi

nummi aurei, vocat' *Guineas*, in predict'
 scripto mentionat' adunc & ibm' ad unum
 tempus & unum congressum (*Anglice*
meeting) fuer' pignorat' (*Anglice betted*) per
 eundem Johem' cum predict' Rogero & per-
 dit' in luso illo & non cum vel pro pecunii
 deposit' (*Anglice ready Money*) quodq; pre-
 dict' centum nummi aurei, vocat' *Guineas*,
 tempore pignorationis illius (*Anglice at the*
Time of the said Bet) Necnon tempore adju-
 cationis in narr' predicta Rogeri per Tho-
 mam Neale in eadem narr' mentionat' fieri
 supposit' fuer' valoris ultra Summam centum
 librarum (videlt') apud paroch' predict' in
 Com' predict' quodq; predict' centum nummi
 aurei tempore lusus illius non fuer' pignorat'
 (*Anglice betted*) in pecuniis deposit' (*Anglice*
ready Money) neque tempore adjudicationis
 predict' in Narr' predict' fieri supposit' solut'
 sed pro securitat' Solucon' predict' centum
 nummorum aureorum per ipsum Johannem
 cum predict' Rogero ut prefertur pignorat'
 (*Anglice betted*) Idem Johannes postea scilt'
 predicto Octavo die Junij Anno Domini
 Millesimo sexcentesimo nonagesimo primo
 supradicto apud paroch' predict' in Com' pre-
 dict' script' predict' in Narr' predict' men-
 tionat' prefat' Rogero dedit sigillavit & ut
 factum suum deliberavit, per quod ac vigore
 statuti predict' in eo casu inde edit' & provis'
 scriptum predict' fuit & est vacuum & nullius
 vigoris in Lege, Et hoc parat' est verificare
 unde pet' judicium si ipse de debito predicto
 virtute scripti predicti onerari debeat, &c.
 Vide 1 *Lut.* 484, &c. *The Plaintiff demurs,*
and the Defendant joins in Demurrer.

Value of the
Guineas bet-
ted, but not
in ready Mo-
ney.

But for Secu-
 rity Defen-
 dant gave the
 Writing.

Plaintiff de-
 murs.

Upon the Argument of the Case, these Points were debated:

This Case not within the Stat. being a meer collateral Matter.

1. Whether this Case was within the Statute 16 Car. 2. cap. 7. but the Opinion of the Court clearly was, That it was not with the Statute, because it was a meer collateral Matter, and which happened on a Chance, and the Event of it did not depend upon the Success of the Game; and also the Act expressly prohibits Wagers upon the Sides or Hands of the Players, and if they had intended any other Wagers, 'tis probable Mention would have been made of them.

That no Place was alledged.

2. The second Objection was made by the Defendant to the Declaration, viz. That no Place was alledged where the Groom-Porter gave his Judgment; but the Plaintiff's Council said there was a Place alledged, because it is said that the Groom-Porter did give Judgment, and that the said 100 Guineas were of such a Value, &c. *Apud paroch' sci' Martini predicti*. And that if the Place had been omitted, yet the Declaration was good notwithstanding, because the Defendant had confess'd the Fact, and then that Fault was cured. *Secundum, Hob. 82. Yelv. 11. 2 Cro. 682.* and therefore that Objection was disallowed by the Court.

That no Judgment appeared.

3. A third Objection was made, That it did not appear by the Declaration that the Groom-Porter had given any Judgment on the Case, because it is not alledged that the stated Case was tendered to him, or that he had given his Judgment thereon.

To which the Plaintiff's Council answered, That it appeared by the Declaration there was a Wager made between the Parties, and what it was; and then it is also alledged that the Groom-

Groom-Porter had adjudged in the Case, and also that by his Judgment the Matter was determined for the Plaintiff, which was sufficient; ^{Judic' per} and the Plaintiff had Judgment by Consent ^{Quer'.} of the whole Court.

Afterwards a Writ of Error was brought, Error and it was insisted for the Plaintiff in the Error; brought.

That an Action in the *Debet* and *Detinet* (as ^{Obj.} That the Case is) did not lie for the 107 *l.* 10 *s.* for ^{Debet and Detinet did not lie.} that the Court could not take Notice that a Guinea is above the Value of 20 *s.* tho' by the way of Commerce, and mutual Compact, it passed for 1 *l.* 1 *s.* 6 *d.* but that would not raise the Value of the Coin, and therefore the Demand ought to be only of 100 *l.* or of 100 Guineas, with an Averment of the Value of them; he agreed the Cases of Foreign Coins, and that Debt lies for 60 *l.* *monete Flandriae*, which amounts to so much *English*, as 2 Cro. 88. *Yelv.* 80. 1 *Leon.* 41. But *Latch* 84. is, That a Declaration for *English* Money may not be *ad Valenc'*; He also agreed, that in *Fen-cott* and *Burrough's* Case, *Trin.* 5 *W. & M.* B. R. where the Action was in Case upon a Bill of Exchange for 55 Guineas, the Court adjudged for the Plaintiff, because the Jury might assess Damages according to the Rate then current; but it was otherwise in Debt, where the Plaintiff shall recover according to his Demand.

To this it was answered by the Defendant's ^{R.} That it Council, That when one demands Foreign ^{might lie.} Coin in Specie, the Writ may be in the *Detinet* only; but when the value of it in *English* Money is demanded, it may be in the *Debet* and *Detinet*, and to this two Judges seemed to agree, and one held Guineas were as Foreign Coin.

2. It was moved, That this Case was within the Statute, tho' the Council did not much insist thereon.

3. It was objected, That it was not averr'd, That the 100 Guineas were not paid in Specie, as by *Rast.* 158. *Yelv.* 135. *Poph.* 28. 1 *Cro.* 515.

Obj. For
want of Aver-
ment.

That the
Plaintiff
ought to have
declared on
the Deed and
the Case also.

Judgment re-
versed.

The Chief Justice said, The Declaration was ill, for the Plaintiff ought to have declared upon the Deed or Fact, and the Case also, and then have shewn that the Case was brought to the Groom-Porter, and that he had given his Judgment thereon; but here the Plaintiff had taken upon him to aver the Purport of the Case without producing it, which is not to be suffered; and tho' the Declaration, by way of Recital, had shewn the Substance of the Case, yet when it is in Writing, the Writing itself ought to be produced; as if *A.* and *B.* agree in Writing concerning the Purchase of Lands in *F.* and afterwards *A.* covenants with *B.* to assign him the Lands contain'd in the said Writing: If *B.* will bring an Action for the Breach of this Covenant, he cannot shew that *A.* covenanted to assign the Lands in *F.* but the Lands in the Writing, and to shew it, and that the Lands in the Declaration, and the Land in the Writing, are the same Lands without any Variance: And he inclined to reverse the Judgment for this Cause; and also for that the Plaintiff had not shewn, that the Guineas were not paid in Specie, but it was adjourned; and in *Trin.* 7 *W.* 3. the Chief Justice and Justice *Eyre* present, the Judgment was reversed, and the Chief Justice gave the Reason, because the Plaintiff had shewn the Case, and Play, and Wager, and then the Deed by which the Parties bound themselves

in the said Wager ; and upon hearing of the Deed, it appear'd that it was to stand to the Judgment of the Groom Porter upon the Case stated and signed by us both, which is not the same, and therefore the Writing containing the Case ought to have been shewn, and an Averment taken, that the Case in it, and in the Declaration, were all one ; and altho' it was urged, that the Inducement of the Case, and that stated, are all one, and therefore whether the Averment was before the Deed, or after, was not material ; yet the Chief Justice was of another Opinion, because the Declaration supposed the Deed to be to perform the Wager comprized in the Deed, whereas it is to perform an Extrinsicical Case, and which is to be join'd by Averment, and for that Reason the Judgment was revers'd, as the Reporter was credibly inform'd. See also this Case in 5 *Mod. Rep.* Fol. 1, 2, 3, &c.

Averment wanting, &c.

The Deed was to perform an Extrinsicical Case.

Note, That by a late Act, made 9 & 10 *Annæ*, It is enacted, That after 1 *May*, 1711. all Notes, Bills, Bonds, &c. given by any Person, where the Consideration is for Money, or other Valuable Thing, won by Gaming, or Playing at Cards, Dice, Tables, Tennis, Bowls, or other Game, or by Betting, or for Repaying any Money knowingly lent for such Gaming or Betting, or lent at the Time and Place of such Play to any so Gaming or Betting, &c. shall be void ; And where such Mortgages, &c. shall be of Lands, &c. or shall incumber or affect the same, such Mortgages, &c. shall devolve upon such Persons as should or might have or be entitled to such Lands, &c. in case the Grantor thereof had been dead, and as if such Mortgages, &c. had been made to the

9 & 10 *Annæ*, against Gaming at Cards, Dice, &c.

Persons entitled after the Decease of the Person incumbring; and all Grants or Conveyances made to hinder such Lands, &c. from devolving upon such Person, shall be deemed Fraudulent and Void.

Remedy for one that loses the Value of 10 l.

Any Person playing at Cards, Dice, &c. or betting or losing the Value of 10 l. and paying the same, or any Part, may within Three Months sue for, and recover the Money so lost from the Winner, with Costs, &c. in which Action it shall be sufficient to alledge, That the Defendant is indebted to the Plaintiff, or received for his own Use, &c. the Money so lost and paid, without setting forth the special Matter, and in case the Loser do not sue, any other Person may, and recover the same, and treble the Value, with Costs, against such Winners, one Moiety to the Informer, the other to the Poor of the Parish.

Treble Value with Costs.

Party to answer upon Oath.

Every Person liable to be sued shall answer upon Oath such Bills as shall be preferred against him, for discovering the Sums of Money, or other Thing so won at Play.

How indemnified.

The Person who shall so discover and repay, shall be indemnified from any further Punishment, &c.

Forfeitures for cheating at Cards, &c.

Any Person who shall by Fraud, &c. in playing at Cards, Dice, &c. or by bearing a Share in the Stakes, &c. or by Betting win any Sum of Money, &c. above 10 l. at one Time or Sitting, such Person so convicted on Indictment, &c. shall forfeit five times the Value of the Sums, or other Thing so won, and be deemed Infamous, and suffer such Corporal Punishment as in Cases of wilful Perjury.

Persons suspected to live by Gaming bound to good Behaviour.

Any Two or more Justices may cause such Persons to be brought before them as they have Cause to suspect to have no visible Estate, &c.

to

to maintain themselves by; and if they do not make it appear, that the principal Part of their Expences is not maintained by Gaming, then such Justices shall require Securities for their good Behaviour for Twelve Months, and in Default commit them to Gaol.

Such Persons finding Sureties, and playing or betting, during the Time, for the Value of 20 s. shall forfeit their Recognizance. Forfeiture of Recognizance.

If any Person shall assault and beat, or challenge to fight any other Person, on account of Money won by Gaming, &c. being convicted thereof, he shall forfeit all his Goods, &c. and suffer Imprisonment during Two Years. Forfeiture for Fighting, &c.

This Act shall not extend to prevent any Person from Gaming within any of Her Majesty's Palaces of St. James or Whitehall, during Her Majesty's actual Residence at either of the said Palaces, or in any other Royal Palace where she shall be resident, so as such Playing be not in any House, &c. the Freehold or Inheritance whereof is out of the Crown, and so as such Playing be for ready Money only. Her Majesty's Palaces excepted.

Statute of Usury pleaded. Secund'
1 Lut. 467, &c. 12 Car. 2. c. 13.

'ET predict' Sa. per Jo. W. Attorn' suum Oyer craved.
'E ven' & defend' vim & injur' quando,
'&c. Et pet' audit' scripti predict' & ei legi-
'tur pet' etiam audit' condition' ejusdem scrip-
'ti & ei legitur in hec verba. The Condition
of this Obligation is such, That whereas the Money lent
above-named *John Mason*, at the Request of upon Adven-
the above-bounden *John Collet*, having lent and ture of the
paid unto him the principle Sum of Thirty Obligor's
Pounds Sterling, upon Adventure of the na- Life.
tural

tural Life of him the said *John Collet*; if therefore the said *John Collet*, or his Assigns, at the End of Twelve Months Calendar, or any sooner Time from and after the first Three Months commencing from the Day of the Date hereof, do and shall well and truly pay or cause to be paid unto the said *John Mason*, his Executors, Administrators, or Assigns, the Sum of Thirty and two Pounds, Five Shillings, Sterling Money; and after, and according to the Rate of Six-pence each Pound each Month, for all such Time whatsoever as shall be expired and spent at such assigned Time of Payment from and after the said first Three Months, commencing as aforesaid; or if within the said Twelve Months, and before such Payment of every Principal and *Premium*, the said *John Collet* shall happen to depart this natural Life, That then this present Obligation shall be void, and of none Effect, or else to be and remain in full Force and Vertute. ‘ Quibus lectis &

Bar, setting forth the corrupt Agreement with one J. L.

‘ auditis idem Samuel dic’ qd’ ipse de debito
 ‘ predict’ virtute scripti obligatorii predict’
 ‘ onerari non debet quia dic’ qd’ ante pre-
 ‘ dict’ tempus confection’ scripti obligatorii
 ‘ predict’ nec non ante diem impetrationis
 ‘ Brevis Originalis ipsius Johannis Mason pre-
 ‘ dict’ scilicet vicesimo nono die Augusti An-
 ‘ no Regni dicti Domini Regis nunc primo
 ‘ predict’ Johannes Collet apud London pre-
 ‘ dict’ in Parochia & Warda predict’ requisivit
 ‘ quendam Johannem Litten quatenus ipse
 ‘ idem Johannes Litten mutuo daret & ac-
 ‘ commodaret eidem Johanni Collet sum-
 ‘ mam Trigint’ librarum legalis monete Ang-
 ‘ lie qd’q; super accommodation’ ill’ inter pre-
 ‘ dict’ Johannem Litten & ipsum Johannem
 ‘ Collet adtunc & ibm’ contra formam Statuti

‘ in

in hujusmodi casu nuper edit' & provis' corrupt' agreeat' & concordat' fuit qd' predict' Johannes Letten accommodaret pred' Johanni Collet predict' Triginta libras a pred' Vice-
simo nono die Augusti Anno primo supradict' per spacium unius anni integri extunc prox' sequen', qd'q; predict' Johannes Collet solveret predicto Johanni Letten quadragint' & quinq; solid' pro accommodatione (Anglice *Loan*) & dando diem solutionis predict' trigint' librarum pro tribus mensibus & sic secundam ratam sex denar' legalis monete Anglie per mensem pro qualibet libra pred' triginti librarum pro accommodatione (Anglice *Loan*) & dando diem solution' predict' trigint' librarum per totum predict' spacium unius anni si predict' Johannes Collet tam diu viveret, qd'q; predict' Johannes Collet & predict' Samuel ut ejus securitas devenirent tent' & obligat' per quoddam scriptum obligatorium pro solution' inde secundum formam & effect' corrupt' agreement' predict', super quo predict' Johannes Letten adtunc & ibm' accommodavit eidem Johanni Collet trigint' libras pro uno anno ac superinde predict' Johannes Collet & idem Samuel in performance' corrupt' agreement' predict' postea scilt' predict' vicesimo nono die Augusti Anno primo supradict' apud London predict' in Parochia & Warda pred' ad requisition' pred' Johannis Letten devener' tent' predict' Johanni Mason in quodam scripto obligatorio pro triginta libris cum condition' eidem scripto obligatorio subscript' pro solution' trigint' & duarum librarum & quinque solid' (duabus libris & quinque solid' parcell' inde existen' pro interesse pro eisdem trigint' libris pro uno quarterio unius anni) & secundum ratam

That in Performance of this Agreement, Defendant at the Request of J. L. gave the Bond to J. M.

sex

That Defen-
dant paid 9 l.
for Loan at
the Year's
End.

Defendant
sets out ano-
ther corrupt
Agreement
between
J. L. and De-
fendant, re-
lating to this
present Bond
and Condi-
tion.

‘ sex denar’ pro qualibet libra quolibet mense
‘ pro omni tali tempore quocunque quod foret
‘ expirat’ ab & post predict’ primos tres men-
‘ ses, posteaque ad finem anni predict’ scilicet
‘ tricesimo die Augusti Anno Regni dicti Do-
‘ mini Regis nunc secundo predict’ Johannes
‘ Collet in completion’ & secundum formam
‘ corrupt’ agreement’ predict’ solvit predict’
‘ Johanni Letten novem libras pro accommo-
‘ dation’ (Anglice *Loan*) & dando diem solu-
‘ tion’ predict’ trigint’ librar’ pro predict’ uno
‘ Anno existen’ secundum ratam sex denar’
‘ pro qualibet libra pro trigint’ librarum pro
‘ quolibet mense in anno predict’, Ac postea
‘ eisdem die & anno ult’ mentionat’ apud Lon-
‘ don predict’ in Paroch’ & Warda predict’
‘ pro continuatione predict’ trigint’ librarum in
‘ manibus ipsius Johannis Collet pro spacio
‘ unius al’ anni postea scilicet predict’ tricesimo
‘ die Augusti Anno secundo supradict’ apud
‘ London predict’ in Paroch’ & Warda pred’
‘ inter predict’ Johannem Letten & p̄fat’ Jo-
‘ hannem Collet corrupt’ & contra formam
‘ Statut’ predict’ in hujusmodi casu nuper edit’
‘ & provis’ agreeat’ fuit qd’ predict’ Johannes
‘ Letten deliberaret predict’ Johanni Collet
‘ predict’ scriptum obligatorium de predict’
‘ vicesimo nono die Augusti Anno primo su-
‘ pradiet’ ut prefertur confect’ cancelland’ qd’q;
‘ predict’ Johannes Litten continuaret predict’
‘ trigint’ libras in manibus predict’ Johannis
‘ Collet pro spacio unius al’ anni integri extunc
‘ prox’ sequend’ qd’q; predict’ Johannes Collet
‘ solveret predict’ Johanni Letten quadragint’
‘ & quinq; solid’ pro accommodatione & dan-
‘ do diem solution’ predict’ trigint’ librarum
‘ pro tribus mensibus & sic secundum ratam sex
‘ denar’ legalis monet’ Anglie per mensem pro
‘ qua-

'qualibet libra predict' trigint' librarum pro
 'accommodatione & dando diem solution' pre-
 'dict' trigint' librarum per totum predict' spa-
 'cium unius anni in condition' predict' supe-
 'rius mentionat' si predict' Johannes Collet
 'tam diu viveret, qd'q; predict' Johannes
 'Collet & idem Samuel ut securitas pro eodem
 'Johannes Collet devenirent tent' & obligat'
 'per quoddam al' scriptum obligatorium pro
 'solutione inde secundum ratam & effect' cor-
 'rupt' agreement' pred', Ac superinde pred'
 'Johannes Collet & idem Samuel ut securitas
 'pro eodem Johanne in performance' corrupt'
 'agreement' predict' ult' mentionat' postea
 'scilicet' predict' tricesimo die Augusti Anno se-
 'cundo supradict' apud London predict' in
 'Paroch' & Warda predict' ad requisition' pre-
 'dict' Johannis Letten devener' tent' predict'
 'Johanni Mason in predict' scripto obligatorio
 'predict' in narr' predict' superius mentionat'
 'in predict' sexagint' libris superius petit' cum
 'conditione ut prefertur, Et idem Samuel ul-
 'terius dic' qd' sex denar' pro interesse pro
 'qualibet libra predict' trigint' librarum in
 'scripto obligatorio predict' hic in Cur' pro-
 'lat' superius mentionat' pro uno mense ex-
 'cedunt ratam sex librarum pro centum libris
 'pro uno anno contra formam Statut' predict',
 'Per quod scriptum obligatorium predict' hic
 'in Cur' prolat' penitus vacuum & nullius vigo-
 'ris in lege devenit & existit, Et hoc parat'
 'est verificare, Unde pet' Judic' si ipse de de-
 'bito predict' virtute scripti obligatorii onerari
 'debeat, &c. Demurrer & rejoinder in De-
 'murrer. Vide 1 Lut. 467.

Bond made
 to J. M. the
 Plaintiff.

Averment
 that 6 d. per
 Month ex-
 ceeds 6 l.
 per Cent.

It was argued for the Plaintiff, that this Con-
 tract was not usurious, and 2 Rolls Rep. 47, 48.
 M.

Q. How this
Cause ended.

Mo. 752. Ellis and Ward's Case were cited. But that it was an usurious Contract, were also cited *Burton's Case, Co. 5. 69, 70. Claiton's Case, 2 Cro. Roberts and Treman's Case, 3 Cro. 642. and Mo. 398. Rutton and Downham's Case, intrat' Trin. 40 Eliz. Rot. 865.* by which Record it appears, (says the Reporter) That as well the Interest as the Principal was in Hazard, although it does not plainly appear by these Books; and that he believed this Action was not prosecuted any further, because he could never see any Thing thereof appear after this Argument, and no Judgment is enter'd on the Rolls, and also by the Books of the Prothonotaries nothing further appear'd. Vide 1 *Lut.* 469, 470.

Aliter per Stat' de Usury. Secund' 1 Saund. 292.

Imparlance.

oyer craved.

ET modo adhunc diem scilt' diem Mercur' prox' post quinden' Pasche isto eod' Termino ulque quem diem predict' Jacobus habuit licenc' ad Billam predict' interloquend' & tunc ad respond', &c. coram Domino Rege apud Westm' ven' tam predict' Jo. To. per Attorn' suum predict' quam predict' Ja. Sh. per Jo. W. Attorn' suum, Et idem Ja. defend' vim & injur' quando, &c. Et pet' audit' script' obligator' predict' & ei legitur, &c. pet' etiam auditum Conditionis ejusdem scripti obligator', & ei legitur in hec verba. ¶ The Condition of this Obligation is such, That if the above-bounden Sir James Shaen Knight and Baronet, his Heirs, Executors, Administrators, or Assigns, shall and do well and truly pay, or cause to be paid, unto the above-named John Farrell Esq; his Executors, Administrators,

ministrators, or Assigns, the full Sum of Three hundred and thirty Pounds, of good and lawful Money of *England*, on the Five and twentieth Day of *February* next ensuing the Date of these Presents, at or in the *Middle-Temple-Hall, London*, deducting thereout only the current Exchange of the same, if any shall be laid out for the Exchange thereof from *Ireland* to *Eugland*; Then this Obligation to be void, and of none Effect, or else to be and remain in full Force and Vertue. ' Quibus lectis & audit' idem Ja. dic' qd' predict' Jo. T. actionem suam predict' inde versus eum habere leu manuteneri non debet quia dic' qd' predict' Johannes post confectionem scripti obligator' predict' scilicet decimo die Maii Anno Regni dicti Domini Regis nunc vicesimo videlt' apud London predict' in Paroch' & Warda predict' corruptive recepit de eodem Jacobo trigint' libras legalis monet' Angl' pro differendo diem solutionis (*Anglice for Forbearance*) predict' trescentarum librarum in predict' scripto Obligatorio, mentionat' pro uno anno integro videlt' a predict' vicesimo quinto die Februarii anno vicesimo supradict' usq; vicesimum quintum diem Februar' Anno Regni dicti Domini Regis nunc vicesimo primo que est ultra ratam sex libraram pro quolibet cent' libr' pro uno anno integro contra formam Statuti in hujusmodi Casu inde nuper edit' & provis' per quod scriptum obligator' predict' vacuum devenit, Et hoc parat' est verificare, unde pet' Judic' si ipse de debito predict' virtute scripti obligatorii predict' onerari debeat, &c. Quer' moratur in Lege, Et Def' jung' in morac'.

Exchange to be deducted.

Bar, that after the Bond the Plaintiff corruptly receiv'd of Defendant 30 l. for Forbearance of the 300 l.

Which is more than 6 l. per Cent.

Judic' pro
Quer', That
 the Plea was
 ill, the Bond
 not being for
 Payment of
 Money upon
 Usury.

Usurious
 Contract af-
 terwards
 avoids not
 the Bond.

But Plaintiff
 had forfeited
 treble Value.

Upon a Bill
 of Bottomry.

This Bond was dated 24 *Maii*, 19 *Regi.*
 After *Oyer* the Defendant pleads as above; and
 upon the Argument it was adjudged for the
 Plaintiff, That the Plea was not good, because
 the late Statute of Usury, 12 *Car. 2. cap. 13.*
 says, that all Bonds, &c. for Payment of any
 Principal, or Money to be lent, or covenanted
 to be perform'd, upon or for any Usury,
 whereupon or whereby there shall be reserv'd
 or taken above the Rate of 6*l.* per Cent. per Ann.
 shall be utterly void; so that the Bond that
 shall be void by this Clause, ought to be for
 Payment of Money upon or for Usury: But
 here the Bond was not for Payment of Money
 upon or for Usury, but for any Thing that
 appears to the contrary, it was made for the
 Payment of a just Debt, and so the Bond was
 good as it was made, then an usurious Contract
 afterwards cannot make the Bond void, which
 was good at the Time of making thereof: But
 it was true, that by such usurious Contract the
 Plaintiff had forfeited the treble Value by the
 latter Clause of the said Statute; but for all
 that, the Bond shall not be void, as is aforesaid.
Vide 1 Saund. 294, 295.

See 1 *Lev. 54.* where upon a Bill of Bot-
 tomry, with excessive Interest, it was held the
 Statute was not pleadable: There being Three
 Contingents, it was objected, That the De-
 fendant had Election to pay on which of them
 he would, and of one of them he was excus'd
 by the Death of the Obligor, and therefore
 excused of all. But it was resolved, that all
 those Things being contingent, and uncertain
 which of them should happen, the Law sup-
 plied the Words [*which should first happen*], and
 gave the Advantage of Action to the Obligee;
 and

and was not like a Case where one is bound to pay a Sum at Michaelmas or Lady-Day, if he was then in Life, and he died after Michaelmas, and before Lady-Day. And Judgment was given for the Plaintiff. *Id.* 55.

See 2 Lev. fo. 7. where it was not held Usury Upon a Lease to accept a Lease for 300*l.* at the Rent of for 300*l.* 35*l.* per Ann. conditioned to be void if he paid the 300*l.* at the End of Four Years; for it was said to be only an Annuity determinable by the Grantor when he pleased.

Vide de Annuitat' & Arrerag' inde pro Exec' vet's Exec', Winch. Ent. 288. & Rob. Ent. 220.

And, 1. Lut. 273. adjudged, That there can be no Usury without a Loan: Also, that if it appear by the Plaintiff's shewing in his Declaration that the Contract is usurious, and cannot be otherwise, Judgment shall be against the Plaintiff, otherwise it shall not be intended. *Ibid.*

No Usury without a Loan, &c.

Vide eund' 466. Resolved, That although it appears by the Words of the Condition that the Bond is usurious, yet no Advantage may be taken thereby, if the Statute is not pleaded.

Where the Statute must be pleaded.

See 2 Ven. 81, &c. 'Bar per Statute de Usury, Qd' scriptor erravit. Repl' qd' Quer' agreavit accommodare Def' 50*l.* secund' Ratam 5*l.* per Cent. Et qd' scriptor qui fecit Obl' &c. erravit.

'Vide Co. Ent. 168. Bar al Obl' ad solvend' Ad solvend' 33*l.* si E. foret superstes tali die & si defunct' tunc 26*l.* tant' de 30*l.* mutuat', Et Quer' non pros'. Vide Co. 70. Clayton's Case.

Ad solvend' si E. foret superstes.

Bar qd' Def'
potuit emere
pro minore
pretio, &c.

See *Rast. Ent.* 689. ' Qd' scriptum factum
' fuit pro securitate solution' 30 l. pro dolio
' olei empt' quod Def' potuit emere pro 25 l.
' in pecuniis numerat' & verum pretium inde
' fuit 25 l. Repl' qd' verum pretium fuit 30 l.
' Et Traverse qd' verum pretium fuit 25 l.

Bar per Obl'
& Recogn'.

' Bar qd' script' Obl' fact' fuit pro securi-
' tate solutionis 200 l. & Recogn' cogn' pro
' solutione 60 l. pro mercimon' empt' tunc va-
' loris 200 l. & non ultra. Repl' qd' script'
' Obl' fact' fuit super bonam considerationem,
' i *Bro.* 187. *Rob. Ent.* 217.

Usury tra-
versed.

ff. ' Similis Bar, Repl' qd' script' Obl'
' fact' fuit pro justo debito, Et traverse le
' Usurie, i *Bro.* 188.

Simile al pla-
cit' pro dif-
ferend' diem.

' Al Obl' Bar qd' Quer' reservavit sibi solvi
' 20 s. pro differendo & dando diem solutionis
' 7 l. pro sex mensibus, Repl' qd' accommo-
' davit 7 l. Def' sine aliqua consideratione
' lucri contra formam Statut', Et traverse le
' Usurie. *Id.* 189, 190, 201. *Thomps.* 146. 157.
' *Hans.* 79. 2 *Bro.* 66.

Simile.

' Bar al Obl' qd' Quer' per securitat' & re-
' ception' hordei reservavit sibi 5 l. pro diffe-
' rend' diem, Repl' qd' pro dict' 5 l. accom-
' modat' & 5 l. solvend' super deliberatione
' hordei Def' deven' obligat' &c. 2 *Bro.* 85.

Qd' Quer'
habuit pastur'
Ovium.

' Qd' Quer' habuit pastur' quarundam ovi-
' um pro accommodation' 20 l. Repl' non pa-
' sturavit, *Cl. Assist.* 315. Similis Bar per colla-
' teral Usury, Repl' & Issue, *Id.* 320. Similis
' Bar, Repl' Rejo' & Issue, *Id.* 424, 428.
' *Thomps.* 427. ' Qd'

‘ Qd’ Quer’ accommodavit Def’ 60 l. & 2 l. per
 ‘ pro dand’ diem pro uno mense script’ Obl’ Mens’ pro
 ‘ fact’ fuit pro solution’ 62 l. &c. Repl’ qd’ 60 l.
 ‘ Def’ fuit indebitat’ in 62 l. de vero debito,
 ‘ Et traverse le Usury, *Bro. Red.* 235.

‘ Bar al Bill’ penal’ per Stat’ & 5 l. pre ma- Per 5 l. pre
 ‘ nibus solut’, Repl’ pro justo debito, Et tra- manibus so-
 ‘ verse corrupt’ Agreement’, Et Demurr’ inde, lut’.
 ‘ *Clift.* 183. Simile al Obl’, *Id.* 185. Similis
 ‘ Bar per Stat’ al Obl’. Repl’ qd’ alit’ agreeat’
 ‘ fuit, Et Quer’ existen’ illiterat’ cepit script’
 ‘ predict’. Rejo’, Et traverse le Agreement’,
 ‘ *Thomps.* 159.

‘ Qd’ Def’ reservavit 6 l. pro quarter’ anni, 6 l. per quar-
 ‘ Repl’ qd’ Def’ cum aliis pro vero debito ter’ anni.
 ‘ deven’ tent’ cum aliis, Et traverse le Usury,
 ‘ *Rob. Ent.* 229.

‘ Qd’ Quer’ accommodavit Def’ 20 l. Et Qd’ 3 Obl’
 ‘ pro expectatione inde per tempus Def’ fec’ pro un’ sum’,
 ‘ 3 seperal’ Obl’ cum penalitat’ pro solution’ &c.
 ‘ 3 seperal’ 10 l. ad seperal’ dies, Unde Obl’ pro-
 ‘ lat’ fuit un’, Repl’ qd’ Obl’ fact’ fuit pro vero
 ‘ debito, Et travers’ le Usury, *Vidians Ent.* 205.

ff. ‘ Similis Bar sur Stat’ de Usurie, Et De-
 ‘ murr’ inde, *Winch. Ent.* 234.

De Venditione Offic' Escheator.

Oyer craved.

Bar per Stat.
5 Ed. 6. a-
gainst selling
of Offices.

ET predict' C. per J. M. Attorn' suum
ven' & defend' vim & injur' quando, &c.
Et pet' audit' scripti predict', Et ei legitur, &c.
pet' etiam audit' conditionis ejusdem scripti
& ei legitur in hec verba. *ff.* The Condition
of this Obligation is such, That if the above-
bounden C. A. his Executors, Administrators,
or Assigns, or some or either of them, do well
and truly content and pay, or cause to be
paid, to the above-named J. D. his Executors,
Administrators, or Assigns, or to some or ei-
ther of them, the full Sum of 200*l.* of lawful
English Money, in and upon the Twentieth
Day of *February* next ensuing the Date hereof,
at the Font-Stone in the *Temple* Church, *Lon-*
don, without Fraud or Delay, that then this
present Obligation to be void, and of none
Effect, or else it is to stand in full Force and
Vertue. ' Quibus lectis & audit' idem C. dic'
' qd' ipse de debito pred' virtute scripti pred'
' onerari non debet quia dic' qd' per quendam
' actum edit' in Sessione Parliamenti Domini
' Edwardi nuper Regis Angl' sexti apud Westm'
' in Com' Midd' vicesimo tertio die Januarii
' Anno Regni sui quinto inchoat' & ibm' ad-
' tunc tent' & continuat' ibm', Usque quin-
' tum decimum diem Aprilis tunc prox' sequen'
' qui fuit in anno sexto ejusdem nuper Regis
' Edwardi sexti (inter alia) inactitat' fuit au-
' thoritate ejusdem Parliamenti qd' si aliqua
' persona sive persone ad aliquod tempus ex-
' tunc imposterum barganizaret vel barganiza-
' rent venderet vel venderent aliquod officium
' sive officia vel deputationem alicujus officii
' rent

vel officiorum sive aliquam partem vel parcel-
 lam alicujus eorum vel reciperet vel recipe-
 rent haberet vel haberent caperet vel cape-
 rent aliquam monetam feodum munus vel ali-
 quod aliud proficuum directe vel indirecte
 aut caperet vel caperent aliquam promissio-
 nem agreement' conventionem obligationem
 vel aliam assuranc' ad recipiend' vel habend'
 aliquam monetam feodum munus vel aliud
 proficuum directe vel indirecte pro aliquo
 officio vel officiis aut pro deputatione alicu-
 jus officii vel officiorum vel alicujus partis ali-
 cujus eorum vel ad intentionem qd' aliqua
 persona haberet exerceret seu gauderet aliqui-
 bus officio vel officiis sive deputatione ali-
 cujus officii vel officiorum vel alicujus partis
 alicujus eorum, quod officium vel que officia
 sive aliqua pars eorundem aliquo modo tan-
 gerent seu concernerent administrationem
 vel executionem justicie vel receptionem in-
 spectionem (*Anglice Controulment*) sive solu-
 tionem alicujus Thesauri nuper Domini Re-
 gis monete redditus reventionis comp' Al-
 nagii auditorum (*Anglice Auditorship*) sive
 supervisionis (*Anglice surveying*) aliquorum
 Domini Regis honorum castrorum mane-
 riorum terrarum ten'torum, boscorum seu
 hereditamentorum sive aliquarum ejusdem
 Domini Regis Customarum (*Anglice Customs*)
 sive aliquam administrationem vel necessa-
 rium ministerium (*Anglice Attendance*) ha-
 bend' fiend' vel exquend' in aliquibus nu-
 per Domini Regis domo customaria sive
 domibus customariis vel custodia aliquorum
 Domini Regis villarum castrorum sive pro-
 pugnaculorum, (*Anglice Fortresses*) existen'
 usitat' occupat' vel appunctuat' loco fortitu-

What Of-
fices.

Forfeiture of
the Seller.

Forfeiture of
the Buyer.

' dinis & defensionis vel que concernerent seu
 ' tangerent aliquod officium Clerici (Anglice
 ' *any Clerkship*) occupand' in aliqua Cur' de
 ' recordo ubi iusticia foret ministrand', tunc
 ' omnes & quelibet tales persona & persone
 ' que sic barganizarent vel venderent aliqua
 ' dictorum officii sive officiorum deputationis
 ' vel deputationum alicujus dictorum officio-
 ' rum sive alicujus partis alicujus eorum vel
 ' que caperent aliquod promission' conventio-
 ' nem obligationem sive assurantiam pro aliqua
 ' pecunia munere vel proficuo dand' pro ali-
 ' quibus dictorum officii sive officiorum depu-
 ' tationis sive deputationum alicujus dictorum
 ' officii sive officiorum sive alicujus partis ali-
 ' cujus eorum non solum perderent & satisfaci-
 ' cerent tot' ejus & eorum jus interesse & sta-
 ' tum que tales persona & persone tunc habe-
 ' rent de in vel ad aliqua dictor' officii vel officio-
 ' rum deputation' sive deputation' vel alicujus
 ' partis alicujus eorum aut de in vel ad donatio-
 ' nem vel nominationem alicujus dictor' officii
 ' vel officiorum deputationis vel deputationum
 ' pro quibus officio vel officiis sive pro deputat'
 ' vel deputationibus cujus officii vel officiorum
 ' aut pro aliqua parte eorundem alique tales
 ' persona sive persone sic facerent aliquam bar-
 ' ganiam sive venditionem aut caperent vel re-
 ' ciperent aliquam summam monete feodum
 ' munus vel proficuum sive aliquod promissum
 ' conventionem vel assurantiam ad habend' vel
 ' recipiend' aliquod feodum munus monetam
 ' sive proficuum, verum etiam qd' omnes &
 ' singule tales persona & persone que darent
 ' vel solverent aliquam summam monete mu-
 ' nus vel feodum aut facerent aliquod promissum
 ' agreement' obligationem sive assuran-
 ' tiam

' tiam pro aliquo dictorum officiorum aut pro
 ' deputatione sive deputationibus alicujus di-
 ' ctorum officii sive officiorum aut alicujus par-
 ' tis alicujus eorum immediate pro & super
 ' eadem feod' monetam sive munus dat' sive
 ' solut' vel super aliqua talia promissa con-
 ' ventionem obligationem sive agreement' habit'
 ' vel fact' pro aliquibus feod' summa monet'
 ' vel munere solvend' ut supradict' est, adjudi-
 ' caretur inhabilis persona (Anglice *a disabled*
 ' *Person*) in lege ad omnia intentiones & pro-
 ' posita ad habend' occupand' vel gaudend' di-
 ' ctis officio vel officiis deputatione sive depu-
 ' tationibus sive aliqua parte alicujus eorum
 ' pro quibus talis persona vel persone sic da-
 ' rent vel solverent aliquam summam monete
 ' feodum vel munus vel facerent aliqua pro-
 ' mits' conventionem obligationem sive aliam
 ' assurantiam dare vel solvere aliquam summam
 ' monete feodum vel munus, Et ulterius in-
 ' actitat' fuit autoritate ejusdem Parliamenti
 ' qd' omnes & singule tales barganie vendi-
 ' tiones promissiones obligationes agreement'
 ' conventiones & assuranc' prout superius spe-
 ' cificantur essent vacua ad & versus eum & eos
 ' per quem vel quos aliqua talis bargania ven-
 ' ditio obligatio promissio conventio vel assu-
 ' ranc' habit' vel fact' forent prout per eundem
 ' Actum (inter alia) plenius apparet, Et idem
 ' C. ulterius dic' qd' post editionem Actus
 ' predict' & ante diem confectionis scripti
 ' predict' hic in Cur' prolat' scilt' decimo die
 ' Augusti Anno Regni Domini Regis nunc
 ' Anglie, &c. primo idem Dominus Rex nunc
 ' per Litteras suas Patentes sigillo suo Cur' sue
 ' Wardorum & Liberationum sigillat' geren' dat'
 ' predict' decimo die Augusti Anno Regni sui
 ' Anglie, &c. primo supradict' dedit & con-

Also the Bar-
 gains and
 Assurances
 given to be
 void.

A Patent of
 several Of-
 fices to J. D.

That J. D. was
possessed of
the Offices.

cessit prefat' J. D. in vita sua officium feo-
darii sui in Com' suo Wilts, habend' tenend'
occupand' gaudend' & exercend' officium
predict' prefat' J. D. per se vel sufficien' de-
putatum suum vel deputat' suos duran' bene
placito ipsius Domini Regis, Et ulterius di-
ctus Dominus Rex de uberiori gratia sua per
easdem Litteras suas Patentes dedit & conce-
sit prefat' J. D. officium supervisoris & parti-
cularis Receptoris omnium & singulorum ho-
norum Castrorum Dominorum Maneriorum
terrarum tenementorum possessionum & here-
ditamentorum suorum quorumcunque cum
partin' in manibus Domini Regis existen'
aut ad manus ejusdem Domini Regis aliquo
tempore deveniend' sive crescen' in dict' Com'
Wilts, ratione aliquorum Wardorum dict'
Domini Regis Ideotarum aut Lunaticorum
in manibus ipsius Domini Regis pro tempore
existen' aut ratione aliquarum liberationum
e manibus ejusdem Regis prosequend' seu
ratione maritagiorum viduarum absq; licen-
tia ipsius Domini Regis pro tempore existen'
habend' tenend' gaudend' occupand' & ex-
ercend' officia predicta eidem J. D. per se
vel per sufficien' deputat' suum vel deputat'
suos duran' bene placito ipsius Domini Regis,
virtute quarum quidem Litterarum Patentium
predict' J. D. fuit possessionat' de officiis
predictis existen' officiis concernen' admini-
strationem & reception' reddit' & reventio-
num dict' Domini Regis nunc honorum Ca-
strorum Dominorum Maneriorum terrarum
tenementorum possessionum & hereditamen-
torum suorum in predict' Com' Wilts, ratio-
nibus predict' in predict' Litteris Patentibus
superius spec' eidem Domino Regi accrescen'
& officia illa habuit & occupavit, predictoque
J. D.

J. D. de officiis predict' sic ut prefertur pos-
 sessionat' existen' postea scilt' vicesimo quarto
 die Junii Anno Regni dicti Domini Regis
 nunc Anglie, &c. undecimo supradicto apud
 London' in Paroch' & Warda predict' con-
 cordat' & agreeat' fuit inter prefat' J. in vita
 sua de officiis predict' possessionat' existen'
 & eundem C. qd' predict' J. sursum redderet
 in manibus dicti Domini Regis nunc officia
 predicta & predict' Litteras Patentes inde ea
 intentione qd' idem C. obtineret concessio-
 nem officiorum predictorum de dict' Domino
 Rege nunc ac haberet & gauderet officiis illis;
 Qd'q; idem C. in consideratione inde solveret
 prefat' J. D. quadringentas libras videlt' 200 l.
 inde parcell' in manibus & al' ducentas libras
 inde resid' super vicesimum diem Februar' ex-
 tunc prox' sequen', Et eidem C. ulterius dic'
 qd' in complement' & performance agreea-
 menti predict' pro & concernen' sursum red-
 ditionem officiorum predict' & predictarum
 Litterarum Patentium inde per predict' J. &
 ad intentionem qd' superinde officia predicta
 eidem C. concederentur, Qd'q; ipse idem
 C. haberet & gauderet officiis illis duran'
 bene placito ipsius Domini Regis postea scilt'
 predict' vicesimo quinto die Junii Anno unde-
 cimo supradict' apud London' predict' in Pa-
 roch' & Warda predict' predictus C. solvit
 prefat' J. predict' ducentas libras parcell' pre-
 dict' quadringent' librarum per ipsum C.
 prefat' J. ut prefertur agreeat' solvi & adtunc
 & ibm' scilt' eodem vicesimo quinto die Junii
 anno undecimo supradict' apud London' in
 Paroch' & Warda predict' per predictum
 scriptum suum obligatorium hic in Cur' pro-
 lat' deveniebat obligat' prefat' J. in predict'
 quadringentis libris cum conditione eidem
 scripto

The Agree-
 ment betwixt
 J. D. and
 the Defen-
 dant.

Part of the
 Money paid
 in Hand, and
 Bond for the
 Residue.

To what
Purpose the
Bond was
given.

Averment of
a Surrender
made by J. D.
according to
the Agree-
ment.

‘ scripto obligatorio subscript’ pro vera solu-
‘ tione predict’ ducentarum librarum resid’
‘ predict’ duadringent’ librarum per ipsum C.
‘ prefat’ J. sic ut prefertur agreeat’ solvi eidem
‘ J. super predict’ vicesimum diem Februarii
‘ fiend’, quod quidem scriptum obligatorium
‘ per quod predictus C. sic ut prefertur deve-
‘ niebat prefat’ J. tent’ & obligat’ in predict’
‘ quadringentis libris factum fuit pro meliori &
‘ majori securitate solutionis earundum ducen-
‘ tarum librarum resid’ predict’ quadringenta-
‘ rum librarum sic ut prefertur per ipsum C.
‘ prefat’ J. agreeat’ solvi pro predicta sursum
‘ redditione predict’ Litterarum Patentium &
‘ Officiorum predictorum prefat’ J. per litteras
‘ illas concess’ per prefat’ J. in manus dicti
‘ Domini Regis fiend’ ea intentione qd’ super
‘ sursum redditione predicta per prefat’ J. super
‘ agreement’ predict’ fiend’ ipse idem C. habe-
‘ ret occuparet & gauderet officiis illis, Et idem
‘ C. ulterius dic’ qd’ predict’ J. postea scilt’
‘ predicto vicesimo quinto die Junii Anno
‘ Regni dicti Domini Regis nunc Anglie, &c.
‘ undecimo supradict’ apud London’ predict’ in
‘ Paroch’ & Warda predictis super receptione
‘ predict’ ducentarum librarum per ipsum C.
‘ prefat’ J. ad tunc & ibm’ solut’ & super assu-
‘ rantia eidem J. per scriptum predict’ hic in
‘ Cur’ prolat’ fact’ pro solutione aliarum ducen-
‘ tarum librar’ de predictis quadringentis libris
‘ resid’ per ipsum C. prefat’ J. informa predict’
‘ fiend’ sursum reddidit in manibus dicti Do-
‘ mini Regis nunc predictas Litteras Patentes
‘ & Officia predict’ sibi per Litteras illas con-
‘ cess’ ea intentione qd’ idem C. exerceret &
‘ occuparet officia illa, Et predict’ C. ulterius
‘ dic’ qd’ superinde per procuracionem predict’
‘ J. dictus Dominus Rex nunc postea scilt’
‘ eodem

‘ eodem vicesimo quinto die Junii Anno Reg- Also of a
 ‘ ni dicti Domini Regis nunc Anglie, &c. un- Grant of the
 ‘ decimo supradict’ per Litteras suas Paten’ si- Offices to
 ‘ gillo suo Cur’ sue Wardorum & Liberation’ the Defen-
 ‘ predict’ sigillat’ geren’ dat’ predict’ vicesimo tant by Let-
 ‘ quinto die Junii Anno undecimo supradict’ ters Patents.
 ‘ dedit & concessit eidem C. officia predicta
 ‘ habend’ tenend’ occupand’ gaudend’ & exer-
 ‘ cend’ sibi quamdiu eidem Domino Regi nunc
 ‘ placeret juxta formam & effectm’ Concordie
 ‘ & agreementi predictorum, Et idem C. ul-
 ‘ terius dic’ qd’ predictum scriptum obligato- And Defen-
 ‘ rium hic in Cur’ prolat’ in forma predicta & dant says,
 ‘ ex causa predicta contra formam predicti That the
 ‘ Actus de Anno Regni predicti nuper Regis Bond being
 ‘ Edwardi sexti quinto supradicto factum, vi- made against
 ‘ gore Actus illius penitus vacuum & nullius the said Sta-
 ‘ vigoris neque effectus in lege devenit & exi- tute, is void.
 ‘ stit, Et hoc parat’ est verificare, Unde per’
 ‘ Judic’ si ipse de debito predict’ virtute scripti
 ‘ predict’ occasione & intentione predictis in
 ‘ forma predicta fact’ onerari debeat, &c.
 ‘ Quer’ moratur in Lege, Et Def’ jung’ in Plaintiff de-
 ‘ morac’, *Winch.* 180, 182. *Vide Bro. Met.* murs.
 ‘ *nov.* 114, 122.

Simile de Venditione Offic’ Subvic’.

‘ **Q**uibus lectis & audit’ (onerari non debet) Bar by the
 ‘ quia dicit qd’ per quendam Actum in said Statute
 ‘ Parlamento Domini Edri’ nuper Regis An- of 5 Ed. 6.
 ‘ glie Sexti per prorogation’ apud Westm’ in for the Of-
 ‘ Com’ Midd’ 13 die Januarii anno regni sui fice of an
 ‘ quinto tent’ edit’ (inter alia) inactitat’ fuit au- Under She-
 ‘ thoritat’ ejusdem Parliam’ qd’ si aliqua per- tiff.
 ‘ sona, &c. [reciting the Act usq;] Et ulterius
 ‘ inactitat’ fuit autoritate predict’ qd’ omnes
 ‘ & quelibet tales barganie venditionis promiss’
 ‘ script’

That the
Plaintiff's Fa-
ther was con-
stituted High
Sheriff.

And for
100 l. agreed
to make the
Defendant
Under She-
riff.

That the De-
fendant was
deputed Un-
der Sheriff,
and thereup-
on made the
Bond for
which this
Action is
brought, &c.

Script' obl' Agreementa conventiones & as-
suranc' qual' fuer' preantea specificat' forent
vacue ad & versus eum & eos per quos aliqua
talis bargania venditio script' obl' promiss'
conventio vel assuranc' forent habit' vel
fact' prout per eundem Actum (inter alia)
plenius apparet, Et idem R. H. ulterius dic'
qd' Dominus Rex nunc per Litteras suas Pa-
tentes sub magno sigillo suo Anglie sigillat'
geren' dat' apud Westm' decimo die Decem-
bris Anno Regni sui vicesimo primo con-
stituit quendam J. B. Ar' patrem predict'
J. B. Jun' modo Quer' Vic' Com' Glouc' in
quo quidem officio Vic' predict' J. B. Sen'
continuavit per unum annum tunc prox'
sequen', Ac quod quidem officium concer-
nit executionem Justicie, pred'cusq; J. B.
Sen' Vic' Com' predict' ut prefertur existen'
ante confectionem scripti predict' scilt' Sexto
die Januarii Anno vicesimo primo supradicto
apud T. predict' corrupte & contra formam
Actus predict' agreeat' fuit inter predict' J. B.
Sen' & ipsum R. qd' idem J. B. Sen' in
cons' 100 l. eidem J. Sen' per ipsum R.
postea solvend' deputaret ip'um R. fore subvic'
ipsius J. B. sen' Com' predict' durante tem-
pore quo idem J. Sen' continuaret Vic' Com'
predict', qd'q; idem R. pro securitate solu-
tionis predict' 100 l. per script' suum obli-
gatoriu' debita juris forma fiend' deveniret
tent' & obligat' prefat' J. B. Jun' in 200 l.
cum conditione pro vera solu'cone predict'
100 l. eidem J. B. Jun' super predictum sex-
tum diem Aprilis tunc prox' sequen': In pro-
secutione & performance cujus quidem cor-
rupt' Agreementi predict' J. B. Sen' Vic'
Com' predict' ut prefertur existen' postea
scilt' primo die Januarii Anno vicesimo
primo

‘ primo supradict’ apud T. predict’ deputavit
 ‘ ipsum R. fore Subvic’ ipsius J. Sen’ Com’ pre-
 ‘ dict’ ac superinde idem R. adtunc & ibm’
 ‘ fecit sigillavit & ut factum suum deliberavit
 ‘ prefat’ J. Jun’ script’ obl’ predict’ hic in Cur’
 ‘ prolat’ cum conditione predict’ eidem scripto
 ‘ subscript’ Quod quidem scriptum obligatoriu’
 ‘ vigore Actus predict’ penitus vacuu’ & nul-
 ‘ lius vigoris aut effectus in lege existit, Et hoc
 ‘ parat’ est verificare, (&c.) Unde, (&c.) Si
 ‘ onerari, (&c.) Vide *Bro. Red.* 216. &c.

‘ Percludi non, Quia dic’ qd’ Script’ Obl’
 ‘ predict’ non est Vacuu’ in Lege modo & Repl’
 ‘ forma prout idem R. superius plitando’ alle-
 ‘ gavit, Et hoc parat’ est verificare Unde pet’
 ‘ judicium, Et debitum suum predict’ unacum
 ‘ dampnis suis sibi Adjudicari, &c.) *Id.* 218.

It is here observed, That Mr. Saunder’s
 pleaded the Plea * as above, because the Date
 of the Statute was mistaken, (for the Plea was
 a good Plea, and well pleaded, but for that
 Fault) on purpose for the Defendant to de-
 mur. (Q. The true Date of the Statute, and if
 not a Mistake in this Observation, * Plea in-
 stead of Repl’, &c.)

Upon an Action of Debt for Tythes.

B A R al part per nil debet, to the Residue; Pro-
 testando, That the Plaintiff never was
 Rector of the said Parish: Pro placito, That the
 Premisses were free of Tythes, as belonging to
 the Priory of St. John of Jerusalem in Eng-
 land, and therein is pleaded Stat. 30 Hen. 8.
 and Stat. 32 H. 8. a Descent from H. 8. to
 Ed. 6. and from Ed. 6. to Q. Mary; from
 Q. M. to Q. Eliz. Then Queen Eliz. Let-
 ters

Several Sta-
 rutes and De-
 scents from
 one King to
 another
 pleaded.

ters Patents to *H.* in Fee, discent from *H.* to *R.* discent from *R.* to the Defendant: Then, Stat. 2 *Edw.* 6. for discharging such Lands from Tythes as were not before chargeable, by reason of any Laws or Statutes, Privilege, Prescription, or real Composition, &c. *Vide Winch. Ent.* 344. &c. *Thomps.* 137. and *1 Saund.* 139. Et *Vide Co. Ent.* 451, 454, 456, &c. See something of this before, *Tit. Bar in Debt sur Statute Ley.*

Bar al Action per President del College des Physicians London. Qui tam, &c. fundat' super Stat' 14 Hen. 8. &c.

Bar per 34 H. 8. For any Subject to apply Medicinal Herbs and Plaisters, &c.

ET predict' G. B. per J. P. Attorn' suu' ven' & defend' vim & injur' quando, &c. Et dic' qd' predict' Presidens qui tam predicto Domino Rege quam pro seipso sequitur actionem suam predict' versus eum habere non debet quia dic' qd' per quendum Actum in Parlamento predicti nuper Regis Henrici Octavi apud Westm' predict' vicissimo secundo die J. Anno Regni sui 34 tenet' edit' & provisum (inter alia) ordinat' & statut' fuit qd' omnibus temporibus abinde licitum sit cuilibet existen' subdit' Regis haben' scienciam & experienciam nature herbarum radicum & aquarum aut operationis eorundem per speculationem sive praxin infra aliquam partem Regni Anglie aut aliquam partem Dominorum Domini Regis exercere applicare & ministrare alicui externo ulceri vulneri Apostumationi, externo tumori sive morbo aliquam herbam sive herbas, unguent. Balnea, pultes' vel Cataplasmata & emplastra secundum ipsorum peritiam experientiam & scientiam in aliquo morborum

morborum ulcerum vel maladoru² pre-
 dictorum, & omnibus aliis eisdem consilibus,
 aut pocone, pro calculo, strangurio, aut febri-
 bus, absq; lecta, vexatione, molestia, pena aut *Non Obstante,*
 amissione bonorum suorum (quocunq; Actu to other Sta-
 ordinatione sive statut' in contrarium inde ante tutes, (mean-
 tunc fact' quovismodo non obstante) Ac ing 3 H. 8.
 idem G. B. ulterius dic' qd' ipse idem G. ca. 11, &c.)
 natus fuit infra hoc regnum Anglie, ac sub-
 dit' predicti Domini Regis nunc per spaciū
 in narratione predict' superius spec' existit' ac
 per tempus illud & Vigint' annos ult' elaps'
 habuit scienciam & experienciam nature
 herbarum, radicum & aquarum & opera-
 tionis eorundem tam per spaculationem quam
 per praxin, per quod idem G. ante predict'
 diem impetrationis brevis originalis predict'
 per spaciū predict' in narratione predict'
 superius spec' in Civitate London' predicta
 videlt' in paroch' & warda in narratione
 predict' superius spec' applicavit & mini-
 stravit diversis subdit' dicti Domini Regis
 nunc, auxiliū & remedium ab ipso peten'
 herbas, unguenta, balnea, pultes' emplastra
 & potiones, ulceribus, morbis, maladiis,
 calculis, strangurio & febribus & talibus aliis
 morbis illis consilibus in statuto predict' spec'
 prout ei bene licuit. Et quoad aliquam aliam *Non Cul' ad*
 exercitationem predict' facultat' medicine aliquam al'
 aliter seu aliquo alio modo quam idem G. exercitacon'.
 superius placitando allegavit idem G. dic'
 qd' ipse in nullo est inde culpabilis prout
 predict' presidens qui tam, &c. superius Issue.
 versus eum narravit, Et de hoc pon' se super
 Patriam, Et predict' Presidens qui tam, &c.
 Similiter, &c.
 Et predict' Presidens qui tam, &c. quoad Repl' as to
 predict' placitum predict' G. B. quoad ap- the Bar.
 plication'

That the
Stat. of 14
Hen. 8. cap. 5.
for incorpor-
ating the
College of
London, pur-
suant to the
said King's
Charter, dat-
ed 13 Sept.
A. 10. was
confirmed by
1 Mar. Parl' 1.
Sess' 2. cap. 9.

Non Obstacle
to other Sta-
tutes.

‘ plication’ & ministration’ predict’ diversis
‘ subdit’ dicti Domini Regis nunc herbas un-
‘ guent’ balnea pulvers’ emplastra & portiones
‘ ulceribus maladiis calcuiis strangur’ & febri-
‘ bus & talibus aliis morbis illis consiliis in
‘ barr’ predict’ superius spec’ in barram placi-
‘ tat’ dic’ qd’ ipse idem Presidens qui tam, &c.
‘ pro aliqua in eodem placito preallegat’ ab
‘ actione sua predict’ versus ipsum G. B. inde
‘ hend’ precludi non debet, Quia dic’ qd’
‘ per quendam Actum in Parl’ Domine Marie
‘ nuper Regine Anglie tent’ per prorogation’
‘ apud Westm’ predict’ vicesimo quarto die
‘ Octobris Anno Regni ipsius nuper Regine
‘ primo & ibm’ continuat’ usq; sextum diem
‘ mensis Decemb’ extunc prox’ sequen’, Re-
‘ citando, qd’ cum in dict’ Parlamento tent’
‘ apud London’ dict’ 15 die Aprilis Anno
‘ Regni dicti nuper Regis Henrici Octavo 14,
‘ & inde adjornat’ usq; Westm’ predict’ ultimo
‘ die Julii in anno quintodecimo ejusdem nuper
‘ Regis & adtunc tent’ inactitat’ existit, Qd’
‘ dicta concessio corporationes per L’ras Paten-
‘ fact’ & concess’ per eundem nuper Regem
‘ Medicis Londini & omnes Claus’ & Articuli
‘ content’ in eadem Concessione essent appro-
‘ bat’, concess’ ratificat’ & confirmat’ per idem
‘ Parliamentum, & consideratione inde stabilit’
‘ existit in dicto Parlamento dicte nuper
‘ Regine Marie qd’ Statut’ ill’ sive Actus Par-
‘ liamenti cum quolibet articulo & clausulo in
‘ eodem content’ extunc continuaret in plenis
‘ robore vigore & effectu (aliquo actu Statuto
‘ lege consuetudine vel aliqua alia re fact’ ha-
‘ bita vel usa in contrariu’ inde non obstan’)
‘ prout per idem Statut’ anno Regni dicte
‘ nuper Regine Marie 1. supradict’ edit’ plenius
‘ liquet, Et hoc parat’ est verificate unde ex
‘ quo

quo predict' G. practiciam & exercitium predict' facultat' Medicine superius cogn' idem Presidens qui tam, &c. petit' Judic' & deb'm predict' tam d'co Domino Regi quam eidem Presidenti unacum dampnis suis occ'one detentiones debiti illius sibi adjudicari, &c.

Def' morat' in Lege, Et pro Causis, Eo, qd' Placitum predict' est decessus (Anglice a Departure) ac etiam non respond' ad Placitum in Barr' placitat' ac caret forma, &c. Def' jung' in morac', Et quia Justic', &c. Et quoad triand' Exit', &c. Vide 1 Browns Ent. 263. - Et vide 8 Co. 109.

Defendant demurs.
Cause of Demurrer.

Observations upon a Statute.

When a Statute is made at the Sessions, &c. held by Prorogation, the most brief and sure Way is to plead, *Qd' ad Session' Parliamenti, &c.* 1 Lut. 140.

If a Statute is made to continue to such a Day, and another Act is made before the Expiration of the first, to continue it for ever; it is all one as if the first Act had been perpetual at first. *Id.* 221.

Where a Statute ought to be recited in the Writ or Count. *Vide* 2 Lut. 1548.

As for the Statute of Limitations pleaded:

SEE 3 Instr. Clerical. 174, 208. And see 1 Saund. 36, 37. 2 Saund. 62, 63, 65, &c. 280. 2 Ven. 259. 3 Lev. 283, 367. 1 Lut. 98, 101, 260, 261, 264.

Where an Action shall be taken within the Equity of the last Proviso of the Stat. 21 Jac. 1. cap. 16. so that he shall not be barr'd by the

Y

said

said Statute. 1 *Lut.* 260, 261, & 264. 2 *Lut.* 946, 950.

Remedy of Entry by Issue in Tail upon Discontinuance by Issue in Tail. 1 *Lut.* 781, 782, 804, 809.

That the Proviso does not extend by Equity to Cases where the Defendant is beyond Sea. 1 *Lut.* 250.

Where pleaded in Bar in *Formedon en Remainder*. 2 *Lut.* 962. Pleded in *Replevin* to bar an Entry. 2 *Lut.* 1204, 1205.

See after, *Bar in Quare Impedit*, *Replevin*, &c.

Upon Entry
and Claims
to avoid
Fines.

Action with-
in one Year
after Entry,
&c.

Suits for Sea-
mens Wages
in the Admi-
ralty.

Note, That by an Act made 4 & 5 of Queen Anne, ca. 16. It is enacted, That no Claim or Entry to be made of or upon any Lands, Tenements, or Hereditaments, shall be of any Force or Effect to avoid any Fine levied, or to be levied, with Proclamations, according to the Form of the Statute in that Case made and provided in the Queen's Court of Common Pleas at Westminster, or in the Courts of Sessions in any of the Counties Palatine, or in the Courts of Grand Sessions of Wales, of any Lands, Tenements, or Hereditaments, or shall be a sufficient Entry or Claim within the Statute made in the 21st Year of King James the First, intituled, (*An Act for Limitation of Actions, and for avoiding of Suits in Law*), unless, upon such Entry or Claim, an Action shall be commenced within One Year next after the making such Entry or Claim, and prosecuted with Effect.

That all Suits and Actions in the Court of Admiralty for Seamen's Wages, shall be commenced and sued within Six Years next after the Cause of such Suits or Actions shall accrue, and not after. Provided,

Provided, That if any Person or Persons who is, or shall be, entitled to any such Suit or Action for Seamens Wages, be, or shall be, at the time of any such Cause of Suit or Action accrued, fallen, or come, within the Age of 21 Years, *Feme Covert*, *non Compos Mentis*, imprisoned, or beyond the Seas, that then such Person or Persons shall be at Liberty to bring the same Actions, so as they take the same within Six Years next after their coming to, or being of full Age, discover, of sane Memory, at large, and returned from beyond the Seas.

Liberty for Persons beyond the Seas.

And that if any Person or Persons against whom there is, or shall be, any such Cause of Suit or Action for Seamens Wages, or against whom there shall be any Cause of Action of Trespass, *Detinue*, *Action sur Trover*, or *Replevin*, for taking away Goods or Cattle, or of Action of Account, or upon the Case, or of Debt grounded upon any Lending or Contract without Specialty, of Debt for Arrears of Rent, or Assault, Menace, Battery, Wounding, and Imprisonment, or any of them, be or shall be, at the time of any such Cause of Suit or Action given or accrued, fallen or come, beyond the Seas; That then such Person or Persons, who is, or shall be, entitled to any such Suit or Action, shall be at Liberty to bring the said Action against such Person or Persons after their Return from beyond the Seas, so as they take the same after their Return from beyond the Seas within such Times as are respectively limited for the bringing of the said Actions before by this Act, and by the said other Act made in the 21st Year of King James the First.

Actions, &c. against Persons who were beyond Seas.

Bār per Heires in Debt.

Against an Heir to the 10th Degree. **I**T is said, That Debt lies against the Heir, upon an Obligation of the Ancestor, to the 10th Degree, *Noy 56. Denny's Case.*

Upon the Obligation of the Father. How an Heir shall be charged on the Obligation of his Father; see at the end of *Popham, Jones p. 85. 155. Bowyer and Rowil, vide Siderf. p. 342.*

In the *Debet* and *Detinet*. It must be brought in the *Debet* and *Detinet*, *Latch. p. 203.* The Bill was on the *File, Debet & Detinet*, but the Declaration on the Roll was *Detinet* only, which could not be amended after Verdict; but Leave was given by the Court to declare upon the old Bill, being within Three Terms he may declare, because the Debt else had been lost, for that the Heir after the Bill entred had aliened the Term. *Ibid.*

Aided after Verdict. Debt against an Heir in the *Detinet* only is aided after Verdict, by the Statute 16 & 17 Car: 2. Cap. 8. but not otherwise. 2 Keb: 259. 290. *Siderfin, p. 342. Comler and Walton.*

Tho' Executors have Assets. It's good against the Heir, tho' the Executors have Assets, he may have his Election. *And. p. 7. Sir Ed. Capel's Case.*

Requisites to bind an Heir. Two Things are observed to be requisite to bind an Heir: 1. *Lien* express; 2. Lands by Descent. In Debt against an Heir, he is charged

ed as Heir, and the Writ is in the *Debet* and *Detinet*, and it's not in *after Droit*, but taken as his proper Debt. From 18 *Ed. 2.* till 7 *H. 4.* if the Executor had *Assets* the Heir was not chargable, but now the Law is changed in that Point. If the Heir sell the Land before the Writ purchased, he is discharged of the Debt in regard he is not to wait the Action of the Obligee. But this is again prevented by 3 & 4 *W. & M. cap. 14.* And Execution may be taken out against the Heir to the Value of the Land; but there is a Saving, that Lands, *bona fide*, aliened before the Action brought, shall not be liable to such Execution. See after.

Execution
against an
Heir.

Note, By this Statute, upon the Heirs making over his Lands before any Action brought, all Creditors shall be preferred, as in Actions against Executors and Administrators.

Creditors,
how preferred.

See an Abridgment of this Statute at the latter end of this Title.

Trusts descending, it's said, shall be *Assets* by the Statute of Frauds and Perjuries, so Lands of special Occupancy: *vid. Stat.* Also 3 & 4 *W. & M. cap. 14.*

Trusts liable.

The Defendant pleads his Father was seized in Fee, and covenanted with *J. D. &c.* to stand seized to the Use of himself for Life, the Remainder to the Defendant in Tail, &c. *Repl'*, That the Father died seized in Fee, &c. and the Jury found that the Father had caused a Deed to be engrossed, and delivered the Deed to a Scrivener to the Use of *J. D.* and

Plaintiff
pleads an In-
tail. *Repl'*,
that the Fa-
ther died
seized.

Bar per Heires in Debt.

M. so as J. D. would agree to it: J. D. died, never having Notice of the Deed. *Per Cur'*, the Father never covenanted, because the Agreement of J. D. was a Condition precedent to the Essence of the Deed, and so no Deed to raise the Uses. *Judic' contra Def'*. *Moor* 300. n. 448. *Dego's and Rowes Case*, 1 Leon 152. n. 11.

Riens per Discent per Filium & Hered',
Hans. 107.

In Debr,
Def' pleads
Riens per
Discent.

‘ Q Uando, &c. & dic' qd' ipse de debito
‘ predict' ut filius & heres predict' A.
‘ patris sui onerari non debet, quia protestando
‘ qd' scriptum illud non est fact' predict' A. pro
‘ placito dic' qd' ipse non habet aliqua terras
‘ seu tenementa per discentum hereditarium de
‘ predicto A. patre suo in feodo simplici nec
‘ habuit die impetrationis Bille predict' nec
‘ unquam postea, Et hoc, &c. Unde pet' Ju-
‘ dic' si ipse de debito predict' ut filius &
‘ heres predict' A. pris' sui virtute scripti pre-
‘ dict' onerari debeat, &c.

Repl. qd' ha-
buit sufficien.

‘ Precludi non quia dic' qd' die impetration'
‘ bille predict' (viz.) tali Die & Anno, &c.
‘ predict' Def' habuit ter' & tent' sufficien' per
‘ discentum hereditariu' de predict' A. patre
‘ suo in feodo simplici unde idem Quer' de de-
‘ bito predict' satisfecisse potuit, viz. apud D.
‘ &c. Et hoc pet', &c. Vid. *Hans.* 107.

Aliter
per Fil' &
Hered'.

‘ Et idem Def' dic' qd' ipse de debito pre-
‘ dict' ut Fil' & Heres predict' R. G. pris' sui
‘ onerari non debet. Quia protestando qd'
‘ script' Obl' predict' non est factum predict'
‘ R. pris' sui pro placito tamen idem E. dic'
‘ qd' ipse non habuit aliqua Terras sive Tenta'
‘ per

per discens' hereditar' de prefat' R. G. pre'
suo in Feodo simplici nec die exhibition' bi l'
predict' vel unquam postea, Unde idem Des'
de debito predict' ut fil' & hered' predict' R.
onerari debeat, &c.

(Precludi non) Quia dic' qd' predict' Des' Repl' qd' ha-
tee' exhibition' bille predict' scilt' (tali die & buit.

Anno) habuit diversa Terras & Tenta' per
discensu' hereditar' de prefat' R. pre' suo in
feodo simplici, Unde eidem Quer' de debito
suo predict' satisfecisse potuit videlt' apud
S. predict' in Com' predict', Et hoc pet' qd'
inquirat', &c. *Thomp. Ent. 428, &c. Vide*
1 Instr. Cler. 220. Clark's Ass. 85. Placita
Gen. 345. 2 Mod. Intr. 222. Bro. Vad. 215,
503.

Et predict' W. per J. S. Attorn' suum ven' Aliter.
&c. Et dic' qd' ipse de debito predict' ut
filius & heres predict' J. H. virtute scripti
predict' onerari non debet, quia dic' qd' ipse
non habet aliqua terr' seu tenta' per discen-
sum hereditariu' de ipso J. patre suo in feodo
simplici, nec habuit die impetrationis bris'
original' predict' R. nec unq; postea, Et hoc
parat' est verificare, unde pet' Judic' si ipse
de debito predict' ut filius & heres predicti
J. virtute scripti predict' onerari debeat, &c.
Vide *Rast. Ent. 172.*

Et predict' R. dic' qd' ipse per aliqua pre- Repl' inde &
allegat' ab actione sua predict' habend' pre- Illuz.
cludi non debet, quia dic' qd' die impetratio-
nis original' bris' sui predict' scilt' quarto die
M. anno regni Domini Regis nunc duodeci-
ma predict' W. habuit terras & tenta' sufficien'
per descensum hereditariu' de predict' J.
patre suo in feodo simplici unde eidem R. de
debito predict' satisfecisse potuit, viz apud
R. in Com' predict', Et hoc petit qd' in-

quiratur per Priam', Et predict' J. silit' ideo
 precept' est Vic' qd' Venire fac' hic in oct'
 Sce' Trin' duodecim, &c. per quos, &c. Et
 qui nec, &c. ad recogn', &c. quia tam, &c.
 ad quem diem hic ven' partes, &c. Et Vic' non
 misit breve. Ideo sicut prius prec' est vic' qd'
 Ven' fac' hic in oct' sci' M. duodecim, &c.
 ad recogn' in forma predict', &c.

*Debt was brought by an Executor against
 an Heir upon his Father's Bond.*

*Bar per Demise & Riens per Discent preter Rever-
 sionem, &c. as follows.*

The Bar.

¶ **E**T predict' E. B. per F. W. Att' suum
 ven' & defend' vim & injur' quando,
 &c. Et dic' qd' predict' T. B. in vita sua
 (cujus heres ipse idem E. est) seit' fuit de
 & in seperal' Messuag' Cottag' Ten'tis &
 Hereditament' modo hic inferius specificat'
 (int' al') in Dominico suo ut de feodo, Et sic
 inde seit' existen' idem T. in vita sua scilt'
 4 die Maii Anno Domini 1656. apud B.
 predict' int' al' dimisit cuidam W. M. tot'
 ill' messuag' sive ten'tum, cum pertin' scituat'
 jacen' & existen' in K. in Com' L. & omnes
 domos, (&c.) Et reversion' ac reversion'
 remaner' & remaner' reddit' & servic' inde
 & cujusslibet partis & parcel' inde ac eciam
 omnes reddit' & al' annual' proficua reservat'
 debit' sive solubil' super aliquam dimissionem
 sive concession' tunc fact' de premiss' sive
 aliqua parte sive parcel' inde: Hend' & tenend'
 predict' W. M. Exec' Adm' & Assign' suis a
 predict' 4 die Maii Anno supradicto pro &
 duran' termino 500 annor' plenar' complend'
 & finiend' reddend' inde annuatim annual'
 reddit'

reddit' unius grani piperis, Et predict' E.
 ulterius dic' qd' ipse non habet aliqua
 terras tenta' seu hereditament' per discens
 hereditar' de pred' T. B. patre suo in feodo
 simplici nec habuit die impetrac' brevis
 original' predict' W. S. J. S. & J. G. vel
 unquam postea preter reversionem & reddit'
 predict' messuag' cottag' terrar' tenor' &
 hereditament' predict' cum pertin' in forma
 predict' dimiss', Et hoc parat' est verificare,
 Unde per' Judic' si ipse de Debito predict' Plaintiff de-
 preterquam in reversion' & reddit' predict' murs speci-
 onerari debeat, &c. Quer' morat' in Lege. ally.
 Et pro Causis, Qd' predict' E. B. nec fatetur
 nec negat nec evitat debitum sive Scriptum
 pred' Qd'q; predict' E. B. non allegavit ali-
 quam intraconem sive possessionem predict'
 W. M. virtute dimission' predict' nec osten-
 dit aliquem perfectum particularem statum
 unde aliqua reverco' pendere sive expectare
 potest, Et deniq; qd' placitum predict' caret
 forma, &c. Def' jung' in morat'. I Lut.
 442, &c.

And upon the Argument, the Plaintiff's Several Ex-
 Council insisted upon the Exceptions mention- ceptions pra
 ed in the Demurrer. Quer'.

Obj. 1. That the Defendant had not confes-
 sed the Debt, according to all Precedents in
 the like Case.

2. That the Defendant had not shewn any
 Thing by which it might appear that the Lessee
 had accepted the Lease, as by Entry; and be-
 fore Entry there is no Reversion, and by Con-
 sequence the Fee-Simple descended to the De-
 fendant.

3. That it is not shewn that the Reversion
 descended to him. It

It was answer'd by the Defendant's Council:

1. That all that which is not denied is confessed; and that there is no Necessity that it should be expressly confessed by a direct *Bene & verum est*.

2. That the Lessee might enter when he pleased; and if there was no Demise, the Plaintiff might plead it.

3. To the Third, he only said, That it was well enough. *Vide 1 Lut. 444, 445*. And there the Reporter observes, That it is expressly alleged that he never had any Lands, &c. by Discent from his Father, except the said Reversion; and then in the Conclusion of this Plea he demands Judgment, *Si ipse de debito predict' preterquam in reversion' & reddit' predict' onerari debeat*; which are strong Implications that there was such a Demise, and that the Lessee had enter'd, and there was such a Debt due to the Plaintiff. *Mes adjournatur* (says he), *Et quid inde venit nescio, car ne fuit argue apres*.

Riens per Discent preter Reversionem, &c.
and the Plaintiff prays Judgment of the Reversion, *Et habet, &c.*

Def' confess'
Action', Et
qd' Riens pre-
ter, &c.

QUando, &c. Et dic' qd' ipse non potest dedicere Actionem predict' W. & M. pred' nec quin scriptum pred' sit fact' pred' C. nec quin ipse sit filius & heres ejusdem C. nec quin ipse debeat prefat' W. & M. predict' 200l. in forma quia iidem W. & M. superius vers' eum narraver. Idem tamen Def' dic' qd' quidam R. C. Ar' Auncest' predict' Def' fuit seir' de & in Capitali Messuago, &c. (and so convey'd the Lands, and reserved the Reversion to himself, and his Heirs) Et idem S.

S. ulterius dicit qd' ipse non habet aliqua ter-
 ras seu tenementa per discensum hereditar'
 de pred' C. patre suo in feodo simplici nec
 habuit die impetrac' predict' Brevis Original'
 predict' W. & M. nec unquam postea preter
 reversionem predict' bosci & boscalis terre,
 &c. & predict' remanere pred' Capitalis Mes-
 suagii, &c. cum pertin' ut suprad', Et hoc pa-
 rat' est verificare, Unde per' judic' si ipse de de-
 bito preterquam in reversion' & remaner' pred'
 virtute scripti' pred' onerari debeat, &c.

Et predict' W. & M. ex quo predict'
 Def' non dedicen' script' predict' fore fact'
 predict' C. pris' sui nec eundem Def' fore
 filium & hered' ejusdem C. cognovit qd' pre-
 dict' reversion' predict' bosci & boscalis terre &
 pred' reman' pred' capital' Messuag', &c. cum
 pertin' predict' C. pefat' Def' ut fil' & hered'
 pred' C. per discensum hereditar' descendere,
 Ac etiam qd' pred' Def' est & die impetrac'
 Brevis Original' ipsorum W. & M. scilt' (tali
 die & Anno) fuit seic' de reversione pred' bos-
 ci, &c. ac de remaner' pred' Capital' Mess'
 &c. cum pertin' ut de feodo taliat' videlt' sibi
 & hered' masculis, &c. procreat', Ac qd' exe-
 cutio de debito predict' de reversion' & re-
 maner' predict' virtute script' predict' solum-
 modo fieri debet, petit judic' & debitum
 suum predict' & dampna sua occasione deten-
 tion' debiti ill' sibi adjudicari, &c. Ideo cons'
 est qd' predict' W. & M. recuperent vers'
 pefat' Def' debitum suum predict' ac damp-
 na sua occasione detention' debiti ill' ad 10 l.
 iisdem W. & M. ex assensu suo per Cur' hic
 adjudicat' de predict' reversione predict'
 bosci, &c. & predict' remaner' capital' Mes-
 suag', &c. in W. levand', Et predict' Def' in
 mia', &c. Vide *Ast.* 230, 231. *al's* 262, 263.

Plaintiff
 prays Judg-
 ment.

Riens

Simile & qd'
A. est in vita.

Riens per Discent preter tales terras & re-
version' medietat' terrarum post mortem A.
que est in vita, Repl' qd' habet terras ultra.
Vide 1 Bro. 182. 2 Mo. Intr. 222. & vide po-
stea.

*Riens per Discent preter Rectorem & tales
Terras plede per Fil' & Hered'.*

Aliter, Def'
confess' A-
ction' & Riens
preter, &c.

ET predict' T. per T. M. Attornat' suum
ven' & defend' vim & injur' quando, &c.
& dic' qd' ipse non potest dedicere actionem
pred' J. nec quin' script' pred' pred' sit factum
predict' T. patris sui, nec quin ipse debeat
prefat' J. predict' octogint' libr' in forma qua
idem J. superius versus eum narravit, tamen
idem T. dicit qd' ipse non habet aliqua terras
nec tenementa per descensum hereditarium
de predict' T. patre suo in feodo simplici,
nec habuit die impetrationis Brevis Original'
predict' J. nec unqm' postea preter Recto-
riam de So. cum pertin' ac duodecim acr'
ter' cum pertinen' in So. Se. & Sc. in predict'
Com' N. annui valoris (&c.) Et hoc parat'
est verificare, Unde petit judic' si ipse ut filius
& heres predict' T. de debito predict' pre-
terquam in predict' Rectoria & 16 acr' terr'
cum pertin' in So. Se. & Sc. predict' virtute
script' predict' onerari debeat, &c. Ideo
considerat' est qd' predict' J. recuperet versus
prefatum F. debitum suum predict' de predict'
Rector' & 16 acr' terr' cum pertin' in So.
Se. & Sc. predict' levand', & damna sua oc-
casione detention' debiti illius ad 60 s. eidem
J. ex assensu suo pro Cur' hic adjudicat', Et
predict' T. in mia', &c. Sed quia nescitur
quan-

quantum Rectoria & 16 acr' terr' ille valent
per annum in omnibus exitibus ultra repris'
precept' est Vic', qd' per Sacrum' proborum
& legalium hominum de Balliva sua diligenter
inquirat', quantum Rector' & 16 acr' terr'
ill' predict' cum pertin' valent per annum in
omnibus exitibus ultra repris', Et inquisitione
illa per se inde diligenter facta easdem Rector'
& 16 acr' terr' cum pertin' juxta verum va-
lore earundum eidem J. sine dilatione deli-
beret tenend' eidem J. quousque debit' &
damna predict' inde levaverit, Et qualiter, &c.
Vic' constar' faciat hic a die sancte T. in 15
dies, &c. Vide *Rast. Ent.* 172. b.

Note, An Heir pleads *Riens per Discent*, ex-
cept 20 Acres in *D. in Com' W.* The Plaintiff
replies more by Descent in *S. viz.* so many
Acres, and found *pro Def'*, and a Discontinu-
ance in the Record of the Plea, from Term P.
to Term M. assigned for Error: And *per Cur'*,
it is Error, and not within Stat. 18 *Eliz.* be-
cause the Judgment was not found on the Ver-
dict, but upon the Confession of the Defen-
dant of Affets. *Yelv. p. 169. Molineux's Case.*

Def' confess',
&c.

Error pro
Discontinu-
ance.

¶ ' Def' cogn' script' fore fact' pris' sed
' placitat' *Riens per Discent* preter tales terras
' & reversion. 2 *Bro.* 97. *Vid.* 178.

Def' cogn'
script' sed,
&c.

¶ ' Debt vers' Fratrem & Hered', Bar pro-
' test' non est factum pris' pro placito *Riens*
' per Discent, Repl' & Issue. 2 *Browns Ent.* 72.

Vers' Fratrem
& Hered.

Riens

*Riens per Discent per Fratrem & Hered'
Filii & Hered' sur Obl'. Debit' versus
A. Filium & hered' B. Filii & Hered'
C. &c.*

Bar.

¶ **E**T Def' dic' qd' ipse de debito predict'
ut Filius & Heres predict' C. virtute
scripti predict' onerari non debet, quia dic'
qd' ipse non habet aliqua terras seu tene-
menta per descensum hereditar' de predict'
B. patre suo in feodo simplici, que eidem B.
descenderunt in feodo suo de pefat' C. patre
suo, nec habuit die impetrationis Brevis, &c.
M. 22, 23 El. Rot. 768. P. 1 J. Rot. 506.
& P. 3 J. Rot. 1613. in C. B. Ast. 233.

*Riens per Discent per Baron & Feme Co-
hered' preter tertiam partem Messuag', &c.*

Def' confels'
Action' &
Riens preter,
&c.

¶ **E**T predict' T. L. & E. Ux' ejus per
S. A. Att' suum ven' & defend' vim' &
injur' quando, &c. Et dic' qd' ipsi non possunt
dedicere Actionem predict' E. N. nec quin
predict' script' Obl' sit factum pefat' G. B.
Nec quin idem T. & E. debent predict' E. N.
predict' quingent' Libr', sed idem T. & N.
ulterius dic' qd' ipsi non habent aliqua terras
seu tenementa per discensum hereditar' de
pefat' G. B. in feodo simplici nec habuer'
die exhibition' Bille ipsius E. N. nec unquam
postea preter tertiam partem unius messuag'
& trium acr' terre in tres partes dividend' an-
nui valor' 13 l. Et hoc parat' sunt verificare,
Unde pet' judic' si iidem T. & E. de debito
predict' preterquam in tertia Parte predict'

‘ cum pertin’ que eidem E. ut un’ hered’ pre-
 ‘ dict’ G. ut prefertur descend’ virtute script’
 ‘ predict’ onerari debeant, &c. Vide *Thomp-*
 ‘ *son* 142.

*Reins per Discent per Consanguineum &
 Hered’.*

‘ **E**T predict’ W. quando, &c. Et dicit qd’ *Riens per*
 ‘ ipse de predict’ 80 l. ut consanguin’ & *Discent.*
 ‘ heres prefat’ Edwardi virtute script’ predict’
 ‘ onerari non debet quia dic’ qd’ ipse nulla
 ‘ habet terr’ sive tenement’ per discensum here-
 ‘ ditarium a predict’ Edwardo Avunculo suo
 ‘ in feodo simplici nec habuit de impetrationis
 ‘ Brevis Original’ ipsius Johannis nec unquam
 ‘ postea, Et hoc parat’ est verificare, Unde pet’
 ‘ judic’ si ipse ut consanguin’ & heres predict’
 ‘ Edwardi de debito predict’ virtute scripti
 ‘ predict’ onerari debeat, &c.

‘ Et predictus J. precludi non, quia dicit *Repl’ qd’ ha-*
 ‘ qd’ predict’ W. die impetrationis Brevis Ori- *buit.*
 ‘ ginalis ipsius Johannis scilt’ die, &c. Anno, &c.
 ‘ Domine Regine nunc habuit divers’ terr’ &
 ‘ tenementa per discensum hereditar’ predict’
 ‘ Edwardi Avunculi sui in feodo simplici unde
 ‘ prefat’ J. de debito suo predict’ satisfecisse po-
 ‘ tuit videlic’ apud A. in Com’ predict’, Et
 ‘ hoc pet’ qd’ inquiratur per Patriam, (&c.)
 ‘ Vide *Bro. Red.* 195.

Riens per Discent per Filias & Cohered’.

¶ ‘ **Q**Uando, &c. Et dic’ qd’ predict’ *Riens per*
 ‘ F. & E. de debito predict’ ut filie *Discent.*
 ‘ & cohered’ predict’ J. pris’ predict’ F. & E.
 ‘ virtute script’ predict’ onerari non debent,
 ‘ Quia

Quia dic' qd' ipse predict' F. & E. non ha-
 bent aliqua terras sive tenementa per discens'
 de prefat' J. patre predict' F. & E. in feod'
 simplici nec habuer' die impetrac' Brevis Ori-
 ginal' predict' R. nec unquam postea, Et
 hoc parat' sunt verificare, Unde pet' judic'
 si ipse ut filie & cohered' predict' J. pris' pre-
 dict' F. & E. de debito predict' virtute script'
 predict' onerari debeant, &c.

Repl' qd'
 habuer' suf-
 ficien'.

Precludi non, quia dic' qd' die impetrac'
 Brevis Original' sui predict' videlt' tertio die
 A. Anno Regni Domini Regis nunc sexto,
 predict' F. & E. habuer' terras & tenementa
 sufficien' per discensum hereditar' de predict'
 J. patre predict' F. & E. in feodo simplici
 unde eidem R. de debito predict' satisfacisse
 potuer' videlt' apud B. predict', Et hoc
 pet', &c. Ideo xii. &c. Vide *Thomps.* 181.

*Riens per Discent per Aunt & Heir, of
 a Daughter and Heir.*

Bar.

ET predict' Hestra per Carolum Taylor
 Attorn' suum ven' & defend' vim & in-
 jur' quando, &c. Et dic' qd' ipsa ut amita
 & heres predict' E. C. filie & hered' predict'
 B. de debito predict' virtute Bille predict' one-
 rari non debet quia dic' qd' ipsa ead' H. non
 habet aliqua terras sive tenementa per discen-
 sum hereditar' de prefat' B. in feodo simplici
 nec habuit die impetrac' Originalis ipsius
 E. R. nec unquam postea, Et hoc parat' est
 verificare unde pet' judic' si ipsa ead' H. ut
 amita & heres predict' E. C. fil' & hered'
 predict' B. de debito predict' onerari de-
 beat, &c.

E

ebt.

E. non ha-

per discens

E. in feod

Brevis Ori-

postea, Et

pet' judic

J. pris' pre-

virtute script

e impetrac

lt' tertio die

nunc sexto,

tenementa

de predict

odo simplici

satisfecisse

, Et hoc

mpf. 181.

Heir, of

r.

olum Taylor

' vim & in-

sa ut amita

red' predict

predict' one-

ead' H. non

a per discen-

odo simplici

ginalis ipsius

oc parat' est

a ead' H. ut

fil' & hered

onerari de-

Et

Et predict' E. R. dic' qd' ipsa per aliqua Repl' qd' ha-
 preallegat' ab action' sua predict' versus pre- buit diversas
 dict' H. habend' precludi non debet quia dic' terras.
 qd' predict' H. ut Amita & heres dicte E. C.
 filie & hered' predict' B. die impetrac' Bre-
 vis Originalis ipsius E. R. scilt' vicesimo sexto
 die Novembris Anno Regni Domini Will'
 & Domine Marie nunc Regis & Regine An-
 glie, &c. quarto habuit diversa terras & tene-
 menta ad valenc' debiti pred' per discensum
 hereditar' de presat' B. in feodo simplici vi-
 delt' ut Amita & heres dicte E. C. filie & he-
 red' predict' B. videlt' apud M. predict', Et
 hoc pet' qd' inquiretur per Patriam, Et pre-
 dict' H. similiter, Ideo precept' est Vic', &c.
 Vide i *Lutw.* 504.

This Action was Debt upon a Bill penal of The Case.
 60l. by the Administrator of *Rooke* against the
 Defendant, Aunt and Heir of E. C. Daughter
 and Heir of B. C. and sets forth, that B. C.
 2 Aug. 1683. became bound in 60l. for the
 Payment of 30l. 18s. 3 Feb. next, and shews
 the Administration, &c.

Defendant, as above, pleads *Riens per Discent.*
 Replication as above, That she had Assets, and
 Issue thereupon.

And a special Verdict was found, viz.

That A. H. was seised in Fee, &c. and took Special Ver-
 to Husband T. C. and that they had Issue dict.
 B. and H. That A. died seised, the said T. C.
 being Tenant by Curtesie, and yet alive; that
 the Reversion descended to B. the Son, who
 was the Obligor.

That B. had Issue *Elizabeth*, and died, De-
 scent to *Elizabeth*; *Elizabeth* died, and Descent
 to H. the Aunt. Sed utrum super tota mate-
 ria predict' in forma predict' compert' pre-

' fat' Hestera die impetrat' Brevis Original
 ' predict' habuisset reversionem predict' Tene
 ' menti cum pertin' per discesum hereditar'
 ' de prefat' Ben. in Feodo simplici ut Amita &
 ' heres dicto Eliz. C. fil' & hered' predict'
 ' Ben. Jur' predict' penitus ignorant, Et
 ' pet' advisament' Cur' hic', Et si Cur' pro
 ' Quer, Jur' pro Quer', Et tunc affid' dampna
 ' &c. Et si Cur' pro Def' Jur' pro Def', &c.

The Pedigree in the Case.

Anne Head, seised } Thomas Clealand, Tenant by
 of the Lands, } the Curtesie, and alive.

Benjamin, the Obligor.

Hester, the Def.

Eliz. dead without Issue.

It was the Opinion of the Court, That the Writ and Declaration were good, and that the Verdict did well maintain them; but the Case of 24 E. 3. 47. *Br. Tit. Assets* 19. was cited on the Part of the Defendant, but that Book stood upon a *Quære* in the Case.

On the Part of the Plaintiff were cited *Jenks's Case*, *Cro. Car.* 151. & *Dyer* 368. *Pl. 46*. *Rolls Abr. Tit. Trial*, 709. *nu.* 62. See *Bell's Case*, *Herley* 134. & 3 *Lev.* 286. & 3 *Mod. Rep.* 253. *Kellow and Rowden's Case*.

Judic' pro
Quer'.

Nota, Omis-
sion in Narr'.

In this principal Case, the Plaintiff had Judgment upon the first Argument; *Wright cum Def.* *Lutwich cum Quer'*. Vide 1 *Lut.* 507, & 508. where it is noted, That in the principal Case it is not alledged in the Declaration, that the Obligor had obliged himself and his Heirs by the Bill Obligatory, but no Notice was taken of it.

But

But that if it had been objected, it had been amendable as a Misprison of the Clerk, &c. by the Authorities of *Walker* and *Worsley's Case*, *Hutton* 83. Co. 8. 159. a. *Blackamore's Case*, and *Sir Francis Wortbley's Case*, *Litt. Rep.* 278, 279: 1 *Jones* 199. But in the last Case cited, Justice *Jones* was of a contrary Opinion, because the Attorney had taken upon him to do that which a Council ought to do, and the Act of the Council is not amendable. But says the Reporter, It is well known to us at this Day, that Council is never concerned in drawing Declarations in Actions in Debt upon Bond. See after.

If the Act of a Council is amendable.

Note, The Case, 3 *Lev.* 286. is said to be a good Case touching this Matter; where the Action is thus:

A. seised in Fee, made an Estate Tail, the Reversion to himself in Fee. He enter'd into a Bond; and after divers Descents from Heir to Heir in Tail, the Tail determined; and it's said, The Heir of the Fee ought to be charged as Heir to *A.* not as Heir to any of the Mesne Heirs in Tail, because they were never actually seised of the Fee.

Where the Heir in Fee shall be charged after a Tail determined.

The Court upon the first Argument inclined for the Plaintiff; and Two of the Justices denied, that upon a general Pleading *Riens per Descent* the Reversion in Fee shall be adjudged Assets to charge the Heir, and said, that constant Experience was to the contrary: *Et adjournatur*. But next *Hill*. Term, Judgment was given for the Plaintiff by the Opinion of Three Justices. *Id.* *Lev.* 287.

If a Reversion in Fee upon a general *Riens per Descent* shall be adjudged Assets.

Omission in
the Narr', if
amendable.

In the Declaration were omitted [*Et ad eandem solutionem faciend' obligo me & heredes meos*], it was amended, Cro. Jac. 147. Forger and Sales. *Alit'* if one declare in *Debet & detinet*, where it ought to be in the *Detinet* only. *Ibid.* Winch, p. 20. *Sed vide ante.*

Against a
Collateral
Heir, the
Declaration
must be spe-
cial.

Upon a Declaration on a Bond against a Collateral Heir, the Declaration must be special; as Debt against the Brother and Heir, the Defendant pleads *Riens per Discent* from his said Brother: But he had Assets by Discent from the Son of his Brother, but he must be charged by special Declaration: And so Judgment *pro Def'*. Cro. Car. 151. Hill. 4 Car. 1. Jenke's Case.

*Cohered' confesse le Action, sed plede over
Riens preter, &c.*

‘ **E**T predict' P. & U. T. A. E. W. sen', &
‘ B. W. jun', & A. per R. W. Att' suum,
‘ Et predicti E. & A. R. & E. & K. per N. G.
‘ Attorn' suum ven' & defend' vim & injur'
‘ quando, &c. Et dic' qd' ipsi non possunt de-
‘ dicere actionem predict' R. predictam nec
‘ quin' scriptum predictum sit factum, Predict'
‘ T. T. patris ipsarum U. E. B. An. Aw. Elia.
‘ & K. nec quin ipsi debeant pefat' R. pre-
‘ dictas viginti mercas in forma qua idem R.
‘ superius versus eos narravit, Tamen iidem
‘ P. & U. (&c.) dic' quod eedem U. E. B.
‘ An. Aw. Elia. & K. non habent aliqua terras
‘ seu tenementa per discentum heredit' de pre-
‘ fat' T. T. fratre suo in feodo simplici nec ha-
‘ buerunt die impetrac' Brevis Originalis pre-
‘ dict'

dict' R. nec unquam postea preter decem
 Acras terre cum pertin' in K. in Com' S.
 annui valoris 33 s. 4 d. Et hoc parati sunt
 verificare unde pet' Judic' si eedem U. E. &c.
 ut sorores & cohered' predicti T. T. fratris
 sui de debito predicto preterquam in predi-
 ctis decem Acris terre cum pertin' in K. pre-
 dict' virtute scripti predict' onerari debeant,
 &c.

Et predict' R. protestando quod predict'
 decem Acr' terre cum pertin' non sunt an-
 nui valoris 33 s. 4 d. prout predict' P. U.
 &c. superius allegaverunt pro placito pro
 citiore executione de debito predict' sibi
 fiend' & adjudicand' dic' quod predictae U. E.
 &c. die impetrationis Brevis Originalis ipsius
 R. scilt' nono die Octobris Anno Regni Do-
 mine Regine nunc 23. habuerunt diversa alia
 terras & tenementa ultra predictas decem
 acras terre cum pertin' in H. predict' per
 discensum hereditarium de prefat' T. T. fratre
 suo in feodo simplici unde eidem R. de debito
 predict' satisfecisse potuerunt videlt' apud K.
 predict' Et hoc pet' quod inquiret' per pa-
 triam, Et predict' P. U. &c. similit', Ideo
 quoad triand' exit' illum precept' est Vic' S.
 qd' Venire fac' hic in Octab' Jur' beate Marie
 xii. &c. Per quos, &c. Et qui nec, &c. Ad
 recogn', &c. Quia tam, &c. Et interim re-
 spectuatur Judicium super cogn' predict' in
 forma predict' fact' quousq; Exit' predict'
 int' partes predict' superius junct' terminetur,
 &c. Vide Co. Ent. 126. Vide postea.

Repl'. Pro-
 stando qd'
 Terr' non
 tanti valoris
 pro placito
 habuer' al'
 Tenementa,
 &c.

*Riens per Discent by Heirs in Gravelkind;
and one being under Age, prays the Plaint
may stay until his full Age: Which is
granted, &c.*

Un' Def'
plede Deins
Age, &c.

Ideo Loquela
reman' quo-
usq; &c.

Quer' ven'
& pet' Re-
sum'.

Vic' retorn'
Nichil ha-
bent.

ET predict' T. & W. per J. P. Attorn'
suum, Et predictus Johannes per pre-
dict' J. P. Guardian' suum qui admissus est
per Cur' dict' Domine Regine hic ad profe-
quend' & defend' pro eodem J. infra etatem
existen', ven' & defend' vim & injur' quan-
do, &c. Et predictus J. dic' qd' ipse est in-
fra etatem viginti & unius annorum videlt'
etatis octodecim annorum & octo mensium
& non amplius, Et hoc parat' est verificare
unde non intendit qd' ipse durante minoritate
sua predict' predicto T. E. de debito pre-
dicto respondere debeat, Et pet' qd' loquela
predict' inde reman' usque plenam etatem
predict' J. Et quia predictus T. E. hoc non
dedic' sed qd' predictus Johannes est infra
etatem, Ideo loquela predict' reman' quousq;
plenam etatem predict' J. &c. posteaque
scilt' 4 die Junii Anno Regni Domine Eliz.
Regine nunc 44. ven' hic in Cur' pred' T. E.
per Attorn' suum pred', Et dicit qd' predictus
Johannes Wood modo est plene etatis & pet'
Breve Domine Regine Vic' London' dirigend'
ad resum' tam pred' J. Wood quam pred' T.
& W. Wood filios effendi hic ad audiend' Judic'
suum de loquela predicta & ei conceditur re-
tornabil' hic a die sancte Trin', &c. Ad quem
diem hic ven' predictus T. E. per Attorn'
suum predict', Et Vic' videlt' A. C. & W. B.
mand' qd' predicti T. W. W. W. & J. W.
nihil habent in Balliva sua per quod sum' pos-
sint,

' sint, Et super hoc testat' sit in eadem Cur'
 ' Regin' qd' predict' T. W. W. W. & J. W. suf-
 ' ficien' habent in Com' Kanc' per quod sum'
 ' possint, Ideo precept' est Vic' Kanc' qd' sum'
 ' per bon' sum' predict' T. W. W. W. & J. W.
 ' essendi hic in Octab' sancti Martini ad audi-
 ' end' Judicium suum de placito predict', Idem
 ' dies dat' est prefat' T. E. hic, &c. Ad quem
 ' diem hic ven' predict' T. E. per Attorn'
 ' suum predict' & optulit se quarto die versus
 ' predictos T. W. W. W. & J. W. de predict'
 ' placito, Et ipsi non ven', Et Vic' videlt'
 ' T. S. Ar' modo mand' qd' ipse sum' fec' pre-
 ' dict' T. W. W. W. & J. W. essendi hic ad-
 ' hunc diem per J. H. & E. B. &c. super quo
 ' precept' fuit Vic' Kanc' qd' distringeret pre-
 ' dict' T. W. W. W. & J. W. per omnes terr'
 ' suas, &c. Et qd' de exit', &c. Ita qd' haberet
 ' corpora eorum hic in Octab' sancti Hill' ad
 ' respond' prefat' T. E. de predict' placito, Et
 ' ad audiend' Judic' suum de plur' default', &c.
 ' idem dies dat' est prefat' T. E. hic &c. Et
 ' modo adhunc diem scilt' diem in Octab' san-
 ' cti Hill' ven' tum predictus J. E. per Attorn'
 ' suum predictum quam pred' T. W. W. W. &
 ' J. W. qui, &c. per J. S. Attorn' suum, Et super
 ' hoc predictus T. E. pet' qd' predicti T. W.
 ' W. W. & J. W. ad narr' predict' respon-
 ' deant, &c. Et predicti T. W. W. W. &
 ' J. W. ut prius defend' vim & injur' quando,
 ' &c. Et pet' licenc' interloquendi, &c. Hill'
 ' 25 Eliz. Rot. 420. Vide Bro. Red. 195.
 ' See after.

See Ast. Ent. 270, 271. Parol Demurre
prie pur deux Infants Coheirs pur Infancy
d'un deux, ut sequitur.

Simile placi-
tum Diens
Age per 2
Cohered', pro-
testando non
habent ali-
quas terras,
&c.

¶ **E**T predict' J. W. & S. Uxor' ejus &
J. C. per E. S. Attorn' suum & pre-
dict' Eliz. per A. & B. qui admissi sunt per
Cur' dicti Domini Regis hic ad defendend'
pro eadem Eliz. infra etat' existen' ut Guar-
dian' ipsius E. ven' & defend' vim & injur'
quando, &c. Et dic' qd' J. M. Actionem
suam pred' inde vers' eos habere non debeat
quia protestando qd' ipsi non habent aliquas
terras sive tenementa per discensum hereditar'
de pefat' J. C. parte ipsarum S. & E. in
feodo simplici nec habuer' die impetrac'
Brevis Original' ipsius Quer' nec unquam
postea, Pro placito tamen iidem Def' dicunt
qd' predict' Eliz. est infra etat' 21 Annorum
videlt' 20 Annorum, Et non amplius, Et
hoc (&c. ut ante) postea scilt', &c. *The*
Plaintiff comes, and says, That Elizabeth is of
full Age, and prays a Resummons; and the She-
riff returns it, and then an Imparlance.

Imparlance
pro Def'.

¶ Et predict' Def' defend' vim & injur'
quando, &c. Et pet' licenc' inde interlo-
quendi abinde usq; in Oct' sancti Mich' &
habent, &c. idem dies dat' est pefat' Quer'
hic, &c. Ad quem diem hic ven' tam pred'
Quer' quam Def' per Attorn' suos predict',
Et super hoc idem Quer' pet' qd' predict'
Def' ad Narr' suam predict' respondeant,
&c. *And then the Defendant pleads Riens per*
Discent preter, &c. and prays Judgment, Si, &c.
preterquam in predict' Tenementis, &c.

¶ *Plaintiff*

' Plaintiff prays Judgment, &c. Ideo cons'
 ' est qd' predict' querens recuperet vers' pre-
 ' fat' Des' debitum suum predict' & dampna
 ' sua predict' occasione detention' debiti ill' ad
 ' 100 s. eidem Quer' ex assensu suo per Cur'
 ' hic adjudicat' de predict' tenementis & me-
 ' dietat' manerii predict' cum pertin' levand',
 ' Et predict' Des' in mia', &c. Et quia nel-
 ' citur quantum predict' tenementa & medie-
 ' tas manerii predict' cum pertin' valent per
 ' Ann' in omnibus Exit' ultra repris', Ideo
 ' quoad predict' tenementa cum pertin' vocat'
 ' T. precept' est Vic' predict' Com' C. qd'
 ' per Sacrum' proborum & legalium hominum
 ' de Com' suo diligent' inquir' quantum eadem
 ' tenementa cum pertin' valent per Annum in
 ' omnibus Exit' ultra repris' & (inquisition' ill'
 ' per eund' Vic' sic fact') eadem tenementa
 ' cum pertin' juxta verum valorem eorundem
 ' eidem Quer' sine dilatione deliberent te-
 ' nend' eidem Quer' quousque debit' & damp-
 ' na predict' inde ac de medietat' manerii pre-
 ' dict' levavit', Et qualit', &c. Vic' constare
 ' hic mens' Pasc' sub sigillo, &c. & sigillis, &c.
 ' Et quoad predict' medietat' manerii predict'
 ' precept' est Vic' D. qd' per Sacrm' (&c. ut
 ' supra) Et qualit', &c. idem Vic' D. constare
 ' fac' hic ad prefat' termin' sub sigillo, &c. &
 ' sigillis, &c. Idem dies dat' est prefat' Quer'
 ' hic, &c. Vide Ast. 270, 271. al's 228, 229.
 ' which ought to be the right Numbers, the Letters
 ' of the Folio being Mm 3.

Breve de In-
 quir' de va-
 lor' Tene-
 mentorum &
 Livery agard.

Note, It's said, The Obligee shall have a Gravelkind.
 joint Action against all the Sons in Gravelkind.
 11 H. 7. 12. b.

Debt

Def' plede
Deins Age.

Debt was against Heirs in Gravelkind: The Defendant pleads, C. one of the Heirs, is with- in Age. The Heir of an Heir shall be charge- able with an Obligation, *simulcum* the imme- diate Heir, and such Heir shall have his Age. *Moo. n. 194. 1 And. p. 10. n. 22. Hawtree and Auger.*

Where there
are Lands at
Common
Law, and in
Gravelkind.

If a Man bind himself and his Heirs in an Obligation, and leaves Land at Common Law and Gravelkind, the Creditors must sue all the Heirs; and if there be Land on the Part of the Father, and on the Part of the Mother, and both have Land by Descent, he shall have several Actions, and Execution shall cease till he may take it against both; so that the Construction of Law is stricter where the Heir is charged with Warranty real, than when he is charged with a Chattel. *Hob. p. 25.*

Per Fil' & Hered'. Riens per Discent preter tertiam partem tertie partis Man'rii & in tres partes Dividend' Rectorie, &c. And the Plaintiff takes Jugdment thereupon.

Def' confests
le Action' &
script' &
plede Riens
preter.

ET predict' J. T. per T. C. Att' suum ven' & defend' vim & injur' quando, &c. Et dic' qd' ipse non potest dedicere Action' predict' W. B. nec quin scripta pre- dict' sunt facta predict' W. C. patris sui nec quin ipse debet pefat' W. B. predict' 200 l. in forma qua idem W. superius vers' eum nar- ravit, Tamen idem J. dic' qd' ipse non habet aliqua terras nec tenta' per discens' heredi- tar' de predict' W. C. pre' suo in feodo sim- plici nec habuit die impetrac' brevis Orig' predict' W. B. nec unquam postea preter
' ter.

tertiam partem tertie partis Manerii de B. in B. in Com' S. ac tertiam partem in tres partes Dividend' Rectorie de C. & un' Cli' terre vocat', &c. contin' in se 50 acr' terre cum pertin' in C. K. in eod' Com', Et hoc parat' est verificare, Unde pet' judic' si ipse ut filius & heres predict' W. C. de debito predict' preterquam in tertia parte predict' Manerii, &c. cum pertin' virtute script' predict' onerari debeat, &c. Super quo predict' W. B. pet' judic' & debitum suum predict' unacum dampn' suis occ'one detencon' Debiti ill' de predict' tertia parte predict' Manerii Rectorie & 50 acr' Terre cum pertin' levand' sibi adjudicari, &c. Ideo cons' est qd' predict' W. B. recuperet vers' prefat' J. debitum suum predict' & dampna sua occ'one detencon' debiti ill' ad 70 s. eidem W. B. ex assensu suo per Cur' hic adjudicat' de tertia parte tertie part' Manerii Rectorie & 50 acr' terre predict' cum pertin' levand', Et predict' J. in mia', &c. Et quia nescit' quantum tertia pars pred' cum pertin' valet per Ann' in omnibus Exit' ultra repris', Precept' est Vic' S. qd' per Sacrum' proborum & legalium hominum de Com' suo diligent' inquir' quant' tertia pars Manerii Rectorie & 50 Acr' terre predict' cum pertin' valet per Ann' in omnibus Exit' ultra repris', Et Inquisition' ill' per se distincte & aperte sic fact' mittat, Et eandem tertiam partem tertie partis Manerii Rectorie & 50 Acr' terre ill' cum pertin' juxta verum valor' ejusdem eidem W. B. sine dilac'one deliberari fac' tenend' eidem W. quousq; debitum & dampn' predict' inde lavavit', Et qualic', &c. Vic' constare fac' hic a die pas' in xv dies sub sigillo, &c. Et sigillis, &c. Vide *Thomp. Riens*
Ent. 173, 174.

Plaintiff
prays Judg-
ment, & Ju-
dic' agard.

Inquir' de
valore Agard
& Livery.

Riens per Fil' & Hered' preter tales Terras & medietat' in B. & Rever'conem in D. in Com. E. Judic' inde de Terris & medietat' & de Reversione cum acciderit.

Bar per
Protestando
& Agreement.

Pro placito
confesses the
Action and
Deed, Sed
Riens preter,
&c.

¶ **E**T predict' T. S. per J. D. Att' suum
ven' & defend' vim & injur' quando,
&c. Et protest' qd' predict' J. dum ipsa sola
fuit super certis considerationibus sibi dum
ip'a sola fuit plenar' satisfact' & content',
agreat' fuit ad acceptand' predict' Debitum
Centum Libr' ut desperatu' quod quidem de-
bitum sic in comput' ipsius J. coram Ordi-
nario reddit' accept' & reputat' fuit, Pro Pla-
cito dic' qd' ipse non potest dedicere Action'
predict' J. & J. pred' nec quin scriptum pre-
dict' sit factum predict' C. pris' sui, nec quin
ipse detinet prefat' J. & J. pred' 100l. in for-
ma qua iidem J. & J. superius vers' eum
narraver' idem tamen T. dic' qd' ipse non
habet aliqua terras sive tenta' per discens'
hereditar' de prefat' C. pre' suo in feodo sim-
plici nec habuit die impetrac' brevis Origi-
nal' predict' J. & J. nec unquam postea
preter un' messuag' vocat' U. (&c.) Ac Re-
versionem Firme sive Grang' de E. cum
pertin' in B. predict' ac alterius medietat',
(&c.) quam quidem Firmam sive Grang'
medietat', Decimarum Granorum & feni-
Marisci, &c. medietat' predict' magni hor-
rei, &c. nuper perquisit' de prefat' J. S. qui-
dam A. S. Ar' & Ux' ejus in jure ipsius A.
tenent ad vitam ipsius ex concessione predict'
C. in vita sua ad usum prefat' A. fact' sine
aliquo pro inde reddend', Et hoc parat' est
verificare, Unde pet' judic' si ipse ut filius &
heres predict' C. pris' de debo' predict' pre-
terquam de tentis' & reversionibus predict'
onerari

'onerari debeat, &c. Ideo cons' est qd' pre- Judic'.
 'dict' J. & J. recuperent vers' pefat' T. de-
 'bitum suum predict' de predict' messuag'
 'voc' U. septem acr' terre, (&c.) Ac de pre-
 'dict' medietat' porco'nis decimarum grano-
 'rum & feni in R. & C. in B. predict', Ac
 'de predict' medietat' Magni horrei, &c. Ac
 'de predict' reversione Firme sive Grangie de
 'E. predict' cum acciderit, Ac de predict'
 'reversione predict' duorum acr' marisci cum
 'acciderit nuper perquisit' de predict' J. S.
 'gen' in B. predict' levand' & dampna sua
 'occ'one detencon' debiti ill' ad 50 s. eisdem
 'J. & J. ex assensu suo per Cur' hic adjudicat',
 'Et predict' in mia', &c. Ac quia nescit'
 'quantum tenta' predict' cum pertin' ac me-
 'dietas predict' porcon' decimarum granorum
 '& feni predict' ac predict' medietas predict'
 'magni horrei & granarii & due acre bosci
 'predict' cum pertin' valent per Annum in
 'omnibus Exitibus ultra repris' juxta verum va-
 'lorem eorundm' precept' est Vic' qd' per fa-
 'crum' proborum & legalium hominum de bal-
 'lia' sua diligent' inquir' quantum predict' mes-
 'suag' vocat' U. septem acre terre & sex Acr'
 'Marisci cum pertin' in B. predict' nuper per-
 'quisit' per pefat' C. de pefat' W. N. Ac
 'predict' medietas predict' porco'nis Deci-
 'marum granorum & feni in R. W. &
 'C. W. predict', Ac predict' medietas pre-
 'dict' magni horrei & granarii & predict'
 'duarum acr' bosci cum pertin' valent per
 'Ann' in omnibus Exitibus ultra repris', Et
 'Inquisition' ill' per se diligent' fact' eadem
 'messuag' septem acr' terre & sex acr' marisci
 'cum pertin' in B. predict' ac medietat' pre-
 'dict' porco'nis Decimarum granorum & feni
 'in R. & C. predict' & predict' medietat'
 'pre-

Inquir' de
 Valor' & De-
 livery Agard.

' predict' magni horrei & granarii & predict'
 ' duarem acr' bosci cum pertin' juxta verum
 ' valorum eorundem sine dilac'one delib'ari fac
 ' tenend' eisdem J. & J. quousq; debitum &
 ' dampna predict' indelevant, Et qualiter, (&c.)
 ' Vic' constare fac' hic, (&c.) Vide *Thomp.*
 ' 208. & 1 *Bro.* 182. & 2 *Mod. Instrand.* 222.

*Debt was brought against Two Husbands and their
 Wives, Cobeirs, Sister and Cosen, and G. W.
 Heir of another Cobeir, Viz. Vers' T. W. & S.
 Ux' ejus, Soror, &c. G. W. Fil' & Hered'
 B. W. & W. W. & E. Ux' Consanguin' S. B.
 Ast. Ent. 263. als' 231, 232. L. L. 3. &c.*

*Riens per
 Discent pre-
 ter.*

THE Defendants confess the Bond, and
 one of the Husbands and his Wife, be-
 ing a Sister, plead *Riens per Discent preter tertiam
 partem, &c.* The other Man and his Wife,
 being a Cousin, plead the like Plea.

*Riens preter
 the Reversion
 after the
 Death of Te-
 nant by
 Curtesy.*

The other Defendant pleads, That he had
 nothing, except the Reversion of a third Part
 after the Death of his Father, who is Tenant
 by the Curtesy of *England*, as follows: ' Et
 ' predict' G. dic' qd' ipse non habet aliqua
 ' terras sive tenta' per discesum hereditar' de
 ' pefat' S. Consanguineo, &c. in feodo suo
 ' nec habuit die impetration' brevis original'
 ' predict' T. B. nec unquam postea preter
 ' Reversionem tertie partis tent'orum predict'
 ' resid' cum pertin' eidem G. ut filio & hered'
 ' predict' B. nuper un' soror' & hered' pre-
 ' dict' S. de ipso S. per discesum hereditar'
 ' de quibus quidem tentis' integris cum pertin'
 ' predict' S. in vita sua fuit seic' in Dominico
 ' suo ut de feodo, Et sic inde seic' existens
 ' apud W. predict' obiit detal' statu suo inde
 ' seic' sine hered' de corpore suo legitime pro-
 ' creat', post cujus mortem tenta' predict' in-

' tegra cum pertin' descend' prefat' S. B. & E.
 ' videlt' iisdem S. & B. ut sororibus & hered'
 ' predict' S. Et prefat' E. ut Consanguineo
 ' & hered' ipsius S. videlt' filia predict' A. alte-
 ' rius soror predict' S. per quod eedem S. B.
 ' & E. in tenta' predict' cum pertin' intraver'
 ' & fuer' inde seit' in Dominico suo ut de feodo,
 ' ipsiq; S. B. & E. sic inde seit' existen' pre-
 ' dict' S. apud W. predict' cepit in virum pre-
 ' dict' T. W. Et predict' B. cepit in virum
 ' quendam T. R. & predict' E. apud W. pre-
 ' dict' cepit in virum predict' W. W. per quod
 ' predict' T. W. & S. Ux' ejus T. R. & B.
 ' Ux' ejus & W. W. & E. Ux' ejus fuer' seit'
 ' de tentis' predict' cum pertin' in Dominico
 ' suo ut de feodo in jure predict' S. B. & E.
 ' ipsiq; T. W. & S. T. R. & B. & W. W.
 ' & E. sic inde seit' existen' predict' T. R.
 ' & B. huer' exit' int' eos legitime procreat'
 ' ipsum G. & postea predict' B. apud W. pre-
 ' dict' obiit de tali statu suo inde seit' & pre-
 ' dict' T. R. ipsam supervixit & se tenuit in-
 ' tas in tertia parte tentorum predict' cum
 ' pertin' & fuit & adhuc' est inde seit' ut
 ' tenens inde per Legem terre Angl', Ac rever-
 ' sio ejusdem tertie partis post mortem ejusdem
 ' T. descend' eidem G. ut Fil' & Hered' pre-
 ' dict' B. per quod idem G. fuit & adhuc
 ' est seit' de reversione ill' ut de feodo & jure,
 ' Et hoc parat' est verificare, Unde per' judic'
 ' si ipse ut Consanguineus & un' hered' predict'
 ' S. de debito predict' preterquam de rever-
 ' sione predict' tertie partis tent'orum predict'
 ' virtute script' predict' onerari debeat, &c.

Tenant by
Curtesy.

' Et predict' T. B. ex quo predict' T. W. Le Plaintiff
 ' & S. G. W. & E. non didicendo scriptum prie Judgment
 ' predict' fore fact' predict' S. Ac iidem de le Revers-
 ' T. & S. non didicend' eand' S. fore sororem sion.

&

& un' hered' predict', superius cogn' qd'
 tertia part' ten'orum predict' cum pertin' in
 tres partes dividend' prefat' S. ut sorori &
 un' hered' ejusdem S. per discesum heredi-
 tar' de eodem Simone descend', Aceciam qd'
 iidem T. W. & S. Ux' ejus sunt, & die impe-
 trac' brevis Orig' ipsius T. B. scilt' 20 die Julii
 Anno, &c. fuer' seit' de tertia parte predict' in
 Dominico suo ut de feodo in jure ejusdem S.
 Qd'q; eadem tertia pars cum soluco'ne debiti
 predict' virtute scripti predict' onerabilis exi-
 stit, Et ex quo predict' W. W. & E. non dedi-
 cend' eandem E. fore Consanguineam &
 alteram hered' predict' S. superius cogn' qd'
 altera pars ten'orum predict' cu' pertin' eidem
 E. ut Consanguin' & alteri hered' ipsius S.
 videlt' fil' predict' A. nuper alterius sororum
 ejusdem S. per discesum hereditar' de eo-
 dem S. descendit, Ac qd' iidem W. W. & E.
 Ux' ejus sunt & predict' die impetrac' pre-
 dict' orig' ipsius T. B. fuer' seit' de eadem
 altera tertia parte sua in D'nico suo ut de
 feodo in jure ejusdem E. Qd'q; eadem
 altera tertia pars sua cum soluc'one debiti
 predict' virtute scripti predict' onerabilis exi-
 stit, Ac ex quo predict' G. non didicend'
 ipsum G. fore Consanguineum & alterum
 hered' predict' S. superius cogn' Qd' rever-
 sio feodo simplic' tertiae partis resid' ten'orum
 predict' cum pertin' post mortem predict'
 T. R. eidem G. ut Consanguin' & alteri
 hered' predict' S. videlt' fil' & hered' predict'
 B. nuper alterius hered' & soror' ejusdem S.
 per descensum hereditar' descendit, Ac qd'
 predict' G. est ac predict' die impetrac' pre-
 dict' brevis Orig' ipsius T. B. fuit seit' de
 reversione predict' ut de feodo & jure, Ac
 qd' reversione il' cum soluc'one debiti predict'
 virtute script' predict' onerabilis existit, petit
 judic'

judic' & debitum suum predict' unacum
 dampnis suis occo'ne detencon' debiti ill'
 vers' p'fat' T. W. & S. de predict' tertia
 parte sua ten'orum predict' cum pertin' per
 ipsos T. W. & S. superius cogn' & vers' pre-
 fat' W. W. & E. de predict' tertia parte sua
 eorundem ten'orum cum pertin' per ipsos
 W. & E. superius cogn', & vers' p'fat' G.
 de predict' Reversione predict' tertie partis
 resid' ten'orum cum pertin' per ipsum supe-
 rius cogn' sibi adjudicari, &c. Ideo cons' est **Judgment:**
 qd' predict' T. B. recuperet vers' p'fat'
 T. W. & S. W. W. & E. & G. W. debit'
 suum predict' & dampna sua occo'ne deten-
 tion' debiti ill' ad 100 s. eidem T. B. ex as-
 sensu suo per Cur' hic adjudicat' de predict'
 duab' tertiis partib' ten'orum predict' cum
 pertin' ac de Reversione predict' levand', &c.
 Et iidem T. W. & S. W. W. & E. & G. W.
 in mia', &c. **Mia'.**

Observations and Cases on this Head.

DEbt was brought against Three Coheirs, **Coheirs non**
 Two confess Affets, the other pleads to **sued:**
 Issue, and is nonsuited; It's a Nonsuit against
 them all, tho' the Two have confess'd; and so
 the Plaintiff lost his Debt, there being an Alie-
 nation before a new Original. *Siderfin,*
 p. 378. *Black's Case.*

In Debt vers' Coheirs on several Issues on **Affets only**
Riens per Discent; Affets was found as to one **as to one.**
 only; Judgment was given against her that had
 Affets, *Qd' recuperet debitum & dampna sua*
 generally *ut de bonis propriis.* 2 Keb. p. 588.

Upon Nil di-
cit.

Also upon Nil dicit, the Heirs own Lands and Goods shall be charged, *id est*, a general Judgment. See the late Act afterwards.

Bail.

And upon a Writ of Error, the Heir shall put in Bail, *per Stat.* 16 Car. 2. *Vide* 2 Keb. 156, 320.

Portions for
Daughters al-
ledged.

The Heir pleads Lands set out for Portions, besides a Reversion, of which he hath nothing; Repl', That a third Part descended, and Judgment special. 1 Keb. 156.

Devise of
Lands on the
Mother's
Side.

Note, It is said, That if a Man, seized of Lands on the Mother's Side, devise them for 16 Months for Payment of Debts, and afterwards to J. who is his Heir on the Mother's Side, he shall take by Discent, and not by Purchase. 3 Lev. 127.

In Debt against an Heir, 'tis no Plea that the Executor had Assets.

Demurrer to
such a Plea,
and good.

DEBT was brought upon a Bond against the Defendant as Heir, who pleaded, That Administration from the Ancestor was committed to J. S. who had administered, and had Assets: The Plaintiff demur'd, and upon the Argument had Judgment; for the Plaintiff had Election to sue the one or the other. 3 Lev. Rep. 189. So 'twas held to be no Plea by an Heir, That the Executor had Assets; but on the contrary, in Debt against Executors.

If an Heir and Executor be both chargeable upon Specialties, it is no Plea for the one, that another Action is depending against the other.

Auter Action depending, no Plea.

3 Lev. 303.

If a Man seized a *Parte Materna* convey the whole, Part to himself for Life, the other Part to himself for Years, with divers Remainders in Tail, with Remainder to his right Heirs; this is the Ancient Reversion, and the whole goes to the Heir, a *parte Materna*. Id. 406.

Heir a Parte Materna.

An Act of Parliament was, That the Heirs of J. S. a Person attainted, should enjoy the Lands; the Person who should have been Heir, if no Attainder had been, shall be taken as Heir, and enjoy the Land. 1 Lev. Ent. 73.

Act, that the Heir of Person attainted should enjoy.

The Sons of Two Aliens naturalized shall inherit, and may be Heirs the one to the other. Id. 59.

Sons of Aliens.

Debt was brought against an Heir, who pleaded *Riens per Discent*, after Verdict for the Plaintiff it was moved in Arrest of Judgment, that the Action was in the *Detinet* only; to which it was answer'd, That it was for the Benefit of the Defendant, and might be in the *Debet* and *Detinet*, or the *Detinet* only, and cited 10 H. 7. 8. b. But by the Court it was held ill, and not cured by the Verdict, and Judgment was given, *Qd' Quer' nil capiat per Billam*. 1 Lev. 130.

Action may be in the *Debet* or *Detinet*.

Sed vide 1 Lev. 224. Debt was brought against an Heir upon the Bond of his Ancestor in the *Detinet* only; after Verdict it was moved,

Seems it ought to be in both, but cured after

Mistake of
Defendant's
appearing by
his Guardian,
Amendable.

That it ought to be in the *Debet* and *Detinet*, and so the Court held at first; but afterwards it was resolv'd to be cured by the *Oxford Act* of Jeofails, being after Verdict, altho' it is not by the particular Words in the Statute, yet it is by the general Words (and other like Cases). A second Exception was, That the Defendant appeared by his Guardian, and it did not appear that he was within 21 Years of Age, nor is the Guardian said to be admitted by the Court, and thereupon it was stayed: But by the Court, if the Guardian-piece could be found, and it is so enter'd there, the Court would amend the Declaration by it.

Where Heir
shall not be
prejudiced by
dubious
Words.

By the First of *Saund.* 185. Dubious Words in the Will ought to be interpreted for the Benefit of the Heir, and not to disinherit him.

Also *vide eund.* 261. Where the Heir shall take as a special Occupant.

Heir ought
to be expressly
bound.

2 *Saund.* 136. If an Heir is not expressly bound in the Bond of his Ancestor, he is not bound at all, altho' he had promised to pay the Money due thereon.

Rent to him,
tho' Heirs
omitted.

Vide eund. 368, 369, 370, 371. Where the Rent shall go to the Heir, notwithstanding the Default of the Word (Heirs) in the Reversion, and where not.

Where the
Heir may lose
the Rent.

Idem 370. Where the Father being seized in Fee, and his Son and Heir apparent make a Lease for Years to commence upon the Death of the Father, rendring Rent to the Son by his proper Name, the Son shall never have that Rent.

The Case was, *f. S.* by Will deviseth his Land to his Heir at 24, and if he die without Heir of his Body before 24, the Remainder over, he attains 24, a Fee-simple descends; for no Tail shall arise before his said Age, which Tail shall never take Effect. 2 *Leon.* p. 11. *Hind* and Sir *John Lion.* 3 *Leon.* p. 70.

Where upon a Remainder over no Tail shall arise.

The Father being bound in an Obligation, deviseth his Lands to his Wife till his Son comes to 21 Years of Age, Remainder to his Son in Fee, and dies: The Son shall be adjudged in by Descent. 2 *Leon.* 123. fol. 101. *Bashpoole's Case.* 3 *Leon.* p. 118.

Upon a Devise to the Wife, Son in by Descent.

The Ancestor was seized in Fee, and by his Will deviseth them to the Defendant, being his Son and Heir, and to his Heirs, on Condition to pay his Debts within a Year, and if he failed, his Executors should sell; he entered, and paid no Debts, the Executors after entered and sold: It's not Affets in the Heirs Hands; for though the Heir hath a Fee, yet he hath it as a Purchase, being clogg'd with such a Condition. *Cro. M.* 5 *Car.* p. 161. *Gilpin's Case.*

Where, after Entry, Affets shall not be said in the Heirs Hands.

By 2 *Vent.* 359. Adjudged in *Canc.* That the Heir, and not Executors, shall have the Surplusage of Lands leased for Payment of Debts.

Where Heir shall have the Surplusage, &c.

Also 2 *Ven.* 348, 351. Upon a Mortgage in Fee the Redemption Money shall be paid to the Executors, and not to the Heir.

Debt against an Heir, the Defendant pleads his Ancestor died Intestate, and Administrator had given the Plaintiff a Bond in full Satisfaction of the

Where the Administrator gave a Bond in Discharge of the former; former.

former; upon Issue join'd it was found *pro Def.* If the Obligor had given this Bond, it had not discharged the former; but being given by the Administrator, so that the Plaintiff's Security is better'd, and the Administrator chargeable *de bonis propriis*, it's a good Discharge. *Mod. Rep. 225. Blith and Hill.*

Riens per
Discent,
Repl', by a
former Writ
sued.

The Heir pleads *Riens per Discent*; the Plaintiff replies, he sued a former Writ against the Heir, and the Defendant was outlawed, which was reversed; and he freshly brought this Writ by *Journey's Accounts*, and avers, he had Assets the Day of the first Writ purchased. *Hob. 248. Cro. Jac. 589. Spray and Sberratt. Vide ante 108, 109, &c.*

Heir pleads a
Release to the
Executors.

Debt against an Heir, he may plead in Bar a Release made by the Obligee to the Executors; and tho' the Deed belongs to another, yet he must shew it forth, for both of them are privy to the Testator. *Co. Litt. 233. a.*

Where Heir
had levied a
Fine.

The Heir pleads *Riens per Discent*, the Defendant had levied a Fine, but because no Deed of Uses was produced at Tryal, the Use was to the Conusor and his Heirs, and so the Heir in by Descent. *Mod. Rep. p. 2. Vide Bro. Vad. 263, 264.*

Alienation
bona fide be-
fore Action.

Riens per Discent pleaded, *Feoffment* pleaded, at the Tryal it appeared to be Fraudulent; it need not be pleaded, but may well be given in Evidence. *5 Co. Rep. 60 Gootbe's Case. 27 E. 3. T. 29. 10 H. 7. 9. 48 E. 3. 32.* If an Heir Alien, *bona fide*, before any Action brought, he shall avoid Debts; but if the Alienation

tion be by Fraud, it shall not bar the Creditors.
See after for the late Act 3 & 4 W. & M.

Upon *Riens per Discent* pleaded; A special Heir by Possession chargeable.
Verdict finds M. being seized in Fee *de Saliva*, (*Anglice*, a Salt Pan) died, and his Son entred, and was seized; and the Defendant entred as Heir *per Possessionem fris'*, This is Assets by Descent, and such Heir by Possession is chargeable to the Debt of the Ancestor. 3 Keb. 659. *Clinch and Butler*.

Upon *Riens per Discent* pleaded, It was found Assets found in the *Cinque Ports*.
he had Assets in the *Cinque Ports*, Judgment was general against the Defendant; and as to the Moieties of the Lands in the *Cinque Ports*, the Plaintiff must have a *Certiorari* to remove the Records into Chancery, and thence by *Mittimus* to send to the Constable to make Execution. 1 And. n. 65. p. 28. *Hicker and Harrison, vers' Tirrel*. 3 Leon. p. 3.

Debt brought in L. against the Heir, he Repl' per Assets, but
pleads *Riens per Discent*; the Plaintiff replies Assets, but shews not in what Place, whether within the Jurisdiction, &c. Judgment was held erroneous; yet *per Dodderidge*, if the Jury finds the Assets to be *deins* Jurisdiction it's sufficient, tho' not so alledged. And it's made a *Quære*, if Costs and Damages shall be given to the Plaintiff on such Judgment. 2 Rolls Rep. p. 48. *Brown and Carrington*.
shews not the Place where.

It's said, That in all Courts the Place of Assets The Place ought to be shewn.
ought to be shewn. Cro. Jac. 502. 6 Co. 46. *Dowdale's Case*.
shewn.

Of Two several Judgments, which shall be first satisfied.

Debt against an Heir, pending the Action, another Action was brought against the same Heir upon another Obligation of the Ancestor, Judgment was given for the Plaintiffs in both Actions; but the Plaintiff in the second Action obtain'd Judgment first: It's said, he for whom the first Judgment was given shall be first satisfied; but if the Heir, after the first Action brought, had aliened; and if the Plaintiff in the second Action commenced his Suit after such Alienation, and obtain'd Judgment before the first Plaintiff; in that Case the Plaintiff in the first Action should be satisfied, and he in the second Action not at all. *Mod. Rep. 253.*

Where Execution of the Land only.

The Heir pleads *Riens per Discent*, except one Acre; if the Plaintiff pleases he may have Execution of that one Acre; or if the Plaintiff pleads that he hath Assets beyond that Acre, and if it be found that he hath Ten Acres more, the Plaintiff shall have Execution of the Land only, and not of his Person.

Where against Land and Body.

Where the Heir pleads he hath nothing by Discent generally, and it is found against him; the Land, and all other Land that he hath, and his Body, are liable to Judgment by *Ca' sa'*, *Fi' fa'*, or *Elegit*. 1 *Brownl.* 254. It is made a *Quære*, of what Difference between a false Plea and *Nil dicit*. 2 *Keb.* 343.

Heir ought truly to confess.

An Heir ought to confess Assets that truly descend to him, otherwise his own Land shall be charged with the Debt. *Plow.* 440. *Pepys Case.* *Dyer* 81. 344.

If upon a *Sci' fa'*, *sur* Recognizance of the Ancestor against the Heir, he pleads *Riens per Discent*, which is false; the Judgment shall be special, because he is not charged as Heir, but as a Tertenant. *Vide Poph. 1 Car. B. R. 153. Bowyer and Ricets. Vide 2 Leon p. 11. Capias* lies against an Heir in case of a false Plea. False Plea upon the Ancestors Recognizance.

Riens per Discent, after the Death of the Ancestor, such an Issue shall be good in a *Formedon*; for if he hath Assets at any time he shall be charged and barr'd of his *Formedon* intirely; for in this Case it ought to be *Riens jour de breve purchase nec unq; puis. 10 H. 7. 8. b.* Heir bar'd of his *Formedon*.

In Debt against an Heir by Bill, after *Riens per Discent* pleaded *tempore exhibic'onis Bille*, the Defendant excepted at the Tryal, because the Bill was not shewed; and the Plaintiff was nonsuit. *Per Cur'*, the Bill is confess'd, and need not be shew'd. *1 Keb. 793. Rogers and Rogers.* Where the Plea confesseth the Bill, &c.

After an Imparlance, one is estopp'd to say that he is not Heir, (being charged in Debt as Son and Heir) so to say he is a Bastard. Estoppel after Imparlance.
35 H. 6. 36, 37.

Judgment against an Heir upon *Nil dicit* shall be general, and shall extend to his own Lands, as well as to those which specially descend. Judgment upon *Nil dicit*.
Poph. 154. Mo. n. 688.

The Judgment and Execution shall be general, unless the Heir acknowledges the Action, and shews that he hath so much by Descent. Simile.
Cro. Eliz. 692.

IF

No Enquiry
upon a false
Plea.

If the Heir pleads *Riens per Discent*, and it be a false Plea, a general Judgment shall be against him, and there needs no VVrit to enquire what Lands he hath; and the Judgment ought to be, that the Defendant's Body and Goods shall be liable, and half his Lands. *Stiles*, p. 287, 288.

Erroneous
Judgment.

If the Jury find he hath Lands by Descent, and name them, and Judgment accordingly, it's said to be erroneous. *Stiles*, p. 327. *Subgrave* and *Bosvil*.

Judgment
quando acci-
derit.

The Defendant confesseth he hath a Seck-Reversion, beyond which he had no Affets; The Plaintiff said he had Affets over, and Issue thereupon; but afterwards the Plaintiff prays Leave to wave his Issue, and to have Judgment of the Reversion, which was granted *quando accideret*. 1 *Rolls Rep.* 57.

Where the
Jury may, or
may not, find
the Value.

The Jury find the Defendant had divers Lands in Fee by Descent, and shews not what, yet Judgment good; for upon his false Plea, Judgment shall be given generally against him if he have any Affets, and so the Quantity of the Affets is not material; but otherwise in case of Executors, for there they must find the Value of the Affets, for he must there recover according to the Affets found. 1 *Rolls Rep.* 234. *Evet* and *Sucliff*.

Riens

*Reins per Discent preter un' Cottagium, &c.
Repl', Qd' habet & monstrat' al' terr', &c.
Et Issue sur ceo ut sequitur.*

¶ **E**T predict' T. & M. per W. S. Att' Riens per
suum ven', (&c.) Et dic' qd' predict' Discent.
M. non habet aliqua terr' seu tenementa per
discens' hereditar' de predict' R. J. patre suo
in feodo simplici nec habuit die impetrac'
Bille predict' nec unquam postea preterquam
unum Cottagium & unum Gardinum eidem
adjacen' scituat' in Paroch' de B. sancti L.
in Com' Midd' modo in tenur' J. S. Et
hoc, &c. Unde, &c.
Et predict' J. D. dic' qd' ipse per aliqua Repl' & mon-
(&c.) Precludi non debet quia dic' qd' bene strat' Terr'.
& verum qd' eadem M. predict' tempore
impetrac' Bille predict' J. scilt' (tali die &
Anno) ac semper postea hucusque habuit pre-
dict' unum Cottagium & predict' unum Gar-
dinum eidem adjacen' scituat' in predict' pa-
roch' de B. sancti L. in predict' Com' M.
prout predict' T. & M. superius placitando
allegaver' Sed idem J. ulterius dicit qd' pre-
terquam predict' un' Cottag' & un' Gardin'
eidem adjacen' in narr' predict' mentionat'
predict' M. predict' die impetrac' Bille pre-
dict' habuit duo Messuag' & duo Gardin' eis-
dem adjacen' cum pertin' in predict' Paroch'
de B. in dicto Com' M. Acetiam quinque
Cottag' & quinque Gardin' eisdem adjacen'
cum pertin' in Paroch' de B. in dicto Com'
M. Acetiam unum Clausum continen' viginti
acr' in eadem Paroch' & in Paroch' de
Stepney sive eorum altera in dicto Com' M.
per discens' hereditar' de predict' R. Patre
suo

Bar per Heires in Debt.

Venire fac'
tam ad tri-
and' quam
ad inquirend.

' suo in feodo simplici, Unde eidem J. de de-
' bito predict' satisfacere potuit, Et hoc per
' &c. Et quia nescitur Cur' Domini Regis hic
' quantum Cottag' & Gardin' predict' in Barr'
' predict' superius spec' valent' per Annum in
' omnibus Exitibus ultra repris', Ideo tam ad
' triand' Exit' predict' quam ad inquirend'
' quant' ead' Cottag' & Gardin' cum pertin' va-
' lent' per Ann' in omnibus Exit' ultra repris',
' Precept' est Vic' Midd' qd' Venire fac', &c.

Riens per Discent per Fil' & Hered'.

SEE before, 4 Instr. Cler. 108, 109, 110, &c.
S The Action is against an Heir upon a Co-
venant to stand seised to Uses, and 400 l. Join-
ture. *Riens per Discent. Repl'*, By Original, &c. sued
out; and that after the last Continuance M. T.
absented himself, and died *in Locis secretis*, &c.
and the Plaintiff had no Notice till such a Day,
whereupon he purchased a new Writ, and that
the Defendant at the Day of purchasing the
first Writ had Assets, &c. *Rejo'*, That the first
Writ was discontinued, &c. *Demurr' & Foin-
der in Demurr'*. Id. 111, 112, &c. See the
Abridgment of the Argument.

Riens per Discent per Fil' & Hered'.

' R Epl' qd' Def' utlegat' fuit ads' Quer'
' que Utlegaria reversat' fuit pro insuffi-
' cien' retorn' Brevis de Ex' fa'. Et qd' die prole-
' cution' prioris Orig' Def' habuit Assets per
' Discent. *Thomp.* 186, 187.

Count &
Plea.

ff. ' L. S. nuper de T. in Com' predict' Ha-
' berdasher fil' & heres W. S. nuper dict' W. S.
' de W. in Com' D. Cleric' ad sect' J. S. &c.
' Et

Et count sur Obl'. Defendant pleads Riens
per Discent, and Plaintiff replies as follows:

Et predict' J. precludi non, quia dic' qd' Repl' per
ipse als' scilt' quinto die Feb' Anno Regni Uclary.
dicti Domini Regis nunc nono, prosecut'
fuit extra Cur' Canc' dicti Domini Regis
apud W. in Com' M. tunc existen' quod-
dam Breve Original' ipsius Domini Regis de
predict' debito 10 l. vers' prefat' L. per no-
men, &c. Et ad Com' suum ibm' tent' 16
die Octobr' Anno Regni dicti Domini Regis
nunc Angl', &c. 10, & Scoc' 46. predict' L.
quinto exact' fuit & non comperuit, Ideo per
Judic' Coron' dicti Domini Regis Com' pre-
dict', predict' Def' utlegat' fuit, Qua qui-
dem Utlegaria postea scilt' Termino sancte
Trin' Anno Regni dicti Domini Regis nunc
12. pro insufficien' retorn' dicti Brevis de
Exigend' in predict' Cur' dicti Domini Re-
gis de Banco per Judic' ejusdem Cur' rever-
sat' & adnullat' fuit, Super quo idem J. re-
center tulit istud Breve vers' prefat' L. de
debito predict', Et idem J. dic' qd' die im-
petrac' predict' primi Brevis Original' ipsius Qd' habuit
sufficien' tem-
pore primi
Brevis.
scilt' predict' 5 die Febr' Anno Regni dicti
Domini Regis nunc 9. supradicto predict' L.
habuit terras & tenementa sufficien' per dis-
censum hereditar' de predict' W. Patre suo in
seodo simplici unde eidem J. de debito pre-
dict' satisfacisse potuit videlt' apud T. predict',
Et hoc per' qd' inquiratur per Patriam, Et
predict' L. similit', Et Judic' pro Quer' super-
inde.

Note, By a Statute made 3 & 4 W. & M. 3 & 4 W &
cap. 14. All Wills concerning Lands, or any M. to prevent
Rents, Profits, Term, or Charge out of the same, Frauds by
Wills, &c.

same, whereof the Devisors shall be seized in Fee simple, in Possession, Reversion or Remainder, or have Power to dispose thereof, shall be deemed (only as against Creditors upon Bonds, or other Specialties, their Executors, &c.) to be fraudulent & void.

Action against the Heirs at Law, and Devisees.

And such Creditors shall have their Actions of Debt against the Heirs at Law, and such Devisees jointly; and such Devisees shall be chargeable for a false Plea, as any Heir should have been.

Upon a Devisee to pay just Debts, &c.

That where there shall be any Devisees of Lands, for Payment of just Debts, or Childrens Portions, other than the Heir at Law, in Pursuance of any Marriage Agreement made in Writing, *bona fide*, before such Marriage, they shall be in Force.

Where an Heir makes over the Land before any Action brought.

That where any Heir at Law shall be liable to pay the Debt of his Ancestor, in regard of any Lands descending unto him, and shall make over the same before any Action brought, such Heir shall be answerable for such Debts to the Value of the Land made over, in which Cases all Creditors shall be prefer'd, as in Actions against Executors and Administrators. And Execution upon any Judgment so obtained, shall be taken out against such Heirs to the Value of the Land, as if they were his own Debts, saving that Lands *bona fide*, aliened before the Action brought, shall not be liable to such Execution.

Lands *bona fide* alien'd, not liable.

How the Heir may plead to the Action, &c.

That where any Action of Debt upon a Specialty is brought against an Heir, he may plead *Riens per Discent* at the Time of the Original Writ brought, and the Plaintiff may reply that he had Lands from his Ancestor before the Original Writ brought; and if upon Issue join'd thereon it be found for the Plaintiff, the Jury

Jury shall enquire of the Value of the Lands descended, and thereupon Judgment shall be given, and Execution awarded as aforesaid: But if Judgment be given against such Heir by Confession, without confessing the Assets descended, or upon Demurrer, or *Nihil dicit*, it shall be for the Debt and Damages, without any Writ to inquire of the Lands.

That Devisees made liable by this Act, shall be chargeable as the Heir at Law by Force of this Act, though the Lands devised be aliened before the Action brought. Devisees chargeable as Heirs at Law.

This Act is made perpetual by Stat. 6 & 7 W. 3. cap. 14.

See the Act of 8 & 9 W. 3. cap. 11. where upon any Prosecution in any the King's Courts of Record upon any Bond, or Penal Sum, for Non-performance of Covenants, Liberty is given to the Plaintiff to assign as many Breaches as he shall think fit, and upon Payment of Damages and Costs assessed before Execution executed, Stay of Execution to be entred on Record: Or if upon Execution executed, the Plaintiff, or his Executors or Administrators, shall be fully paid, Defendant discharged, and Satisfaction entred; yet the Judgment shall stand as a further Security to answer to the Plaintiff, his Executors, &c. upon a further Breach of Covenant in the said Deed, upon which the Plaintiff, &c. may have a *Scire Facias* against the Defendant, his Heirs, Tertenants, Executors, or Administrators, suggesting other Breaches, and summoning to shew Cause why Execution should not be awarded, &c. And upon Payment of Damages and Costs, Proceedings to be again stay'd; and so *toties quoties*.

Heirs, Tertenants, Executors and Administrators, liable to Execution upon a Judgment, upon a Bond or Penal Sum for Non-performance of Covenants.

See

Several Mat-
ters allowed
to be pleaded.

See the Stat. 4 & 5 *Annæ*, cap. 16. made for Amendment of the Law, which gives Liberty for any Defendant or Tenant in any Action or Suit, or for any Plaintiff in *Replevin*, in any Court of Record, with the Leave of the same Court, to plead as many several Matters there- to as he shall think necessary for his Defence.

See this Act at the Beginning of *Instructor Clericalis*, Part the Fourth. See also afterwards, *Tit. Replevin*.

*Bar al suit de Executors & Admin-
istrators in Debito.*

By Abatement for that the Testator was
alive *Die impetrationis Brevis*, &c. *Repl*,
Qd' non. Rejo', *Qd' fuit. Surrejo'*, *Qd'*
obiit ante diem impetrac' Brevis, &c.

Bar.

¶ ' **E**T predict' Def' per A. B. Attorn' suum
' ven' & pet' judic' de Brevis predict'.
' Quia dic' qd' predict' A. Testatrix, &c.
' die impetrac' Brevis Original' predict' ipsius
' Exec' fuit in plena vita, Et hoc, &c. Unde
' pet' judic' de Brevis illo, &c.

Repl.

' Et predict' Executor' dic' qd' Breve suum
' predict' ratione preallegat' cassari non debet
' quia dic' qd' diu ante diem impetration' Bre-
' vis Original' pred' scilt' die, &c. Anno, &c.
' predict' A. Testatrix apud L. in Paroch'
' &c. constituit predict' Quer' fore Execut'
' Testi'

Test'ri sui ibm', Et hoc, (&c.) Unde pet'
judicium & debitum, (&c.) unacum damp-
nis, &c.

Et predict' Def' dic' qd' predict' A. dicto Rejo'.
die impetrac' Brevis predict' fuit in plena vita
prout ipse superius allegavit, Absque hoc qd'
predict' A. obiit die impetration' Brevis pre-
dict' prout predict' Quer' superius allegavit, Et
hoc, &c. Unde pet' judic' de Brevi ill', &c.

Et predict' Executor dic' qd' predict' A.
obiit ante diem impetrac' Brevis predict' pro- Surtejo'.
ut ipse superius allegavit, Et hoc pet', &c.

Vide Hansf. Ent. 107. where it begins in *Barr'
Action' non, &c.* And tho' by *Co. on Litt. 303.*
each Plea ought to have its proper Conclusion,
as, a Plea to the Writ to conclude to the Writ,
and a Plea in Bar to conclude to the Action;
yet by *Prisott, 37 H. 6. 24.* if the Plea be in
Bar, and the Conclusion to the Writ, it shall
be taken in Bar. *Vide 34 H. 6. 1, 2. & 36
H. 6. 17.* Because he cannot have a good Writ,
if he be barr'd of his Action. See 3 *Instr.*
Cler. last pub. 12, 13. Et vide ante.

ff. Aliter, by an Exec' qd' Testator fuit in
vita die impetration' Brevis, secund' 1 *Lut. 13.*
And Judgment, Qd' Def' respond' ouster,
for a Default in the Plea. *Id. 14.*

ff. Debt upon Bond against an Executrix,
the like Plea, That the Testator was alive at
the Time of the Original purchased, without
any Averment, but generally, *Et hoc parat' est ve-
rificare:* But adjudged, that no Advantage could
be taken of it upon a general Demurrer; but
Judgment was given, *Qd' Breve cassetur,* because
it appear'd that the Writ bore Date before the
Money was due, 1 *Lut. 15, 16.*

Similis Bar
sans Avera
ment.

Where if
Two Plain-
tiffs or De-
fendants, and
One die, the
Action shall
proceed.

Note, We will here observe from the Stat. 8 & 9 W. 3. cap. 11. That if there be Two or more Plaintiffs or Defendants, and one die, if the Cause of Action survive to the surviving Plaintiff, or against the surviving Defendant, the Writ or Action shall not abate, but such Death being suggested on the Record, the Action shall proceed.

Traverse that
A. died in-
testate.

In Thomps. Ent. 140. Debt is brought by M. L. as Administrator of A. against T. S. who pleads Action non; for that A. by his Will made the Defendant S. and one H. B. deceased, his Executors, who jointly administer'd divers Goods and Chattels; and traverses, that A. died intestate, as the Plaintiff supposes. (See after in the Bars.)

Bar versus Adm' Qd' L're Adm' per ipsum obtent' revocat' fuer'.

Bar.

*¶ ' ET predict' C. per J. S. Attorn' suum
' ven' & per' judic' de Billa predict',
' Quia dic' qd' post diem Lune prox' post Tres
' Sept' sci' Mich' ult' preterit' quo die Billa pred'
' impetrac' fuit videlt' 4 die N. Anno, &c. 16. su-
' prad' pred' L're Administration' bonorum &
' catallorum que fuer' pred' J. B. tempore mortis
' sue ante tempus ill' obtent' per predict' J. G. ad
' instantiam cujusdam E. B. vid' Relict' pre-
' fat' J. B. per W. M. mil' Legum doctorem
' Commissar' in ea parte autorizat' in Cena-
' culo Dominorum Advocatorum London' in
' Paroch' sancti G. ibm' debita juris forma re-
' vocat' fuer', Et per eund' W. M. Judicem in
' ea parte ut prefertur competen' adtunc &
' ibm' pro nullis & invalidis ad omnem Juris
' effectum'*

Revocat' on.

effectum pronunciat & declarat fuer, Et hoc parat est verificare, Unde pet' judic' de Billa predict', Et qd' Billa predict' cassetur, &c.

Repl' by an Appeal from the said Sentence to the King in Chancery.

ET predict' J. G. dic' qd' per aliqua per The Repl'.
 prefat' C. superius placitando allegat'
 Billa ipsius J. G. predict' cassari non deber,
 Quia dic' qd' post pronunciationem & declarationem Sentencie predict' vers' ipsum
 J. G. per prefat' W. M. de revocation' Administration' predict' 4 die N. Anno, &c. 16.
 supradicto, idem G. in predict' Cenaculo
 Minorum Advocator' in Paroch' predict'
 a Cur' predict' necnon a prefat' W. M. Judice
 predict' sic ut presertur existen' ac presertim
 a predict' sententia revocation' Litterar' Advocation' predict' cum debita cognition' per prefat' W. M. eidem J. G. concess'
 tanquam iniqua injusta & injuriosa, ad Dominum Regem nunc in Cur' Canc' sue debita
 Legis forma appellavit, Que quidem Appellatio per prefat' W. M. adtunc & ibm' allocat' fuit, Ac per dict' Dominum Regem
 nunc in Cancellar' sua apud W. pred' recept' & acceptat' fuit, Ac superinde idem Dominus
 Rex nunc per quasdam Litteras suas Paten' Commissionis sub magno sigillo suo Angl' King's Commission to his Delegates.
 confect' geren' dat' apud Westm' predict' xxv die N. Anno, &c. 16. supradict' dilectis
 suis O. B. Mil' & Bar' Capital' Justic' Domini Regis de Banco, M. H. Mil' Capital'
 Baron' Scaccarii Domini Regis, G. T. Mil' un' Baron' Scaccarii Domini Regis, W. W.
 Mil' un' Justic' Domini Regis ad placita co-

That the Ap
peal is in
Force.

ram ipso Rege tenend' assign' J. A. Mil' un'
Justic' Domini Regis de Banco, R. W. Mil'
M. B. Mil' E. P. Mil' T. B. Mil' & T. R.
Legum respective Doctoribus direct', quo-
rum sana Doctrina conscienc' puritat' ac in
rebus gerend' deteritat' plurimum in ea parte
idem Dominus Rex confidit commisit & man-
davit eis quorum ipsos prefat' O. B. M. H.
C. T. W. W. & J. A. vel un' eorum presen'
& consentien' esse voluit in causa & causis
Appellationis & Querele Militatis & Iniqui-
tatis, &c. necnon post & contra eam attentat'
& innovat' quorumcunque & quorumvis to-
tiusque negotii principalis unacum suis inci-
den' emergen' dependen' annex' & connex'
quibuscunque voc' primitus coram ipsis pre-
fat' T. B. ceterisque de jure in ea parte con-
vocandis & de plano & sine strepitu & figura
Judicii sola rei veritate inspecta & mera equi-
tate attendat' procederent, auditisque hinc in-
de propositis & proponerint quod justum fue-
rit & equum in premissis decernerent faci-
end' quod & que in premissis decreverent pro
li'timo juris remedia firmiter observari, prout
per easdem L'ras paten' plenius liquet, Et
predict' J. G. ulterius dic' qd' predict' O. B.
M. H. & T. C. W. W. J. A. R. W. M. B. E. P.
T. B. & T. R. appellationem ipsius J. G. pre-
dicta postea scilt' 25 die N. Anno 16. supra-
dicto apud W. pred' Commission' pred' re-
ceper' & acceptaver', Que quidem appellatio
coram prefat' O. B. M. H. T. C. (&c.) apud
Westm' predict' adhuc pender indiscuss' & in-
determinat', Per quod secundm' Legem Ci-
vilem hujus Regni Angl' sententia predict'
pro revocation' Litterar' Administration' pre-
dict' eidem J. G. sic ut prefertur Commiss'
nullius vigoris seu effectus in Lege existit, Et
hoc

‘ hoc parat’ est verificare, Unde pet’ judic’ &
 ‘ debitum predict’ unacum dampnis suis occa-
 ‘ sione detentione debiti ill’ sibi adjudicari,
 ‘ &c.

‘ Def’ demurr’ inde cum multis Causis, ut
 ‘ sequitur.

‘ Et predict’ C. dic’ qd’ Placitum predict’ Demurr’ cum
 ‘ per predict’ J. G. superius replicando placitat’ Causis.
 ‘ materiaque in eodem content’ minus suffi-
 ‘ cien’ in Lege existunt ad Action’ suam pre-
 ‘ dict’ habend’ manutenend’ ad quod quidem
 ‘ placitum idem C. necesse non habet nec per
 ‘ Legem terre tenetur aliquo modo respondere,
 ‘ Unde pro defectu sufficien’ replication’ in hac
 ‘ parte idem C. ut prius pet’ judic’ de Billa
 ‘ predict’, &c. Et pro caus’ moration’ in Lege
 ‘ in hac parte idem C. monstrat’ & Cur’ hic
 ‘ ostendit Causas subsequen’ videlt’, Pro eo qd’
 ‘ predict’ J. G. replicando dic’ qd’ post pro-
 ‘ nunciation’ & declaration’ sententie predict’
 ‘ vers’ ipsum J. G. per pifat’ W. M. de re-
 ‘ vocatione Litterarum Administrationis pre-
 ‘ dict’ scilt’ predict’ 4 die N. Anno, &c. 16.
 ‘ supradict’ idem J. G. in predict’ Cenaculo
 ‘ Dominorum Advocator’ in Paroch’ predict’ a
 ‘ Cur’ predict’ necnon, (&c.) ad Dominum
 ‘ Regem nunc in Cur’ Cancellar’ sua debita
 ‘ legis forma appellavit, Et non apparet a qua
 ‘ Cur’ seu a Cur’ ubi sententia predict’ pro-
 ‘ nunciat’ & declarat’ fuit vel a predict’ Cur’
 ‘ de Banco, Etiam de eo qd’ predict’ J. repli-
 ‘ cando dicit qd’ idem Dominus Rex nunc
 ‘ per quasdam Litteras suas Paten’ Commis’ sub
 ‘ magno sigillo suo Angl’ confect’ geren’ dat’
 ‘ apud Westm’ predict’ 25 die N. Anno, &c.
 ‘ 16. dilectis suis O. B. Mil’ & Bar’ Capital’
 ‘ Justic’ Domini Regis de Banco M. H. Mil’

Bar al fuit de Executors &

' Capital' Baron' Scaccarii Domini Regis
 ' W. W. Mil' un' Justic' Domini Regis ad
 ' Placita coram ipso Rege tenend' assign' J. A.
 ' Mil' un' Justic' Domini Regis de Banco
 ' R. W. Mil' M. B. Mil' E. P. Mil' T. B. &
 ' T. R. Legum respective Doctoribus direct',
 ' ubi 25 die N. antea neque per predict' C.
 ' neque per predict' J. G. mentionat' etiam eo
 ' qd' predict' J. G. per placitum suum pre-
 ' dict' pet' debitum predict' unacum dampnis
 ' suis occasione detention' debiti ill' sibi adjudi-
 ' cari, Ubi predict' Billa predict' J. G. non est
 ' de placito debiti. Vide *Thomps. Ent.* 221, 222.
 ' Vide postea Barr'.

Sur Action per Exec. Defendant pleads
Al. Exec' non nominat', and traverses
 that the Testator made the Plaintiff
 sole Executor.

Bar.

§. ' **E**T pet' judic' de Brevi predict', Quia
 ' dic' qd' Testator (tali Die & Anno)
 ' apud S. pred' condidit testatum & ult' volunt'
 ' sua & test' predict' quendam T. C. Executor'
 ' constituit & postea ibm' obiit, Post cujus
 ' mortem Testm' ill' ut volunt' predict' Testa-
 ' toris coram R. L. Legum Doctore, &c. pro-
 ' bat fuit & Administratio bonorum predict'
 ' Testatoris eidem Quer' & T. ut Executor'
 ' Testatori predict' commissa fuit, Qui qui-
 ' dem J. adhuc superstes & in plena vita existit
 ' videlt' apud S. pred', Et ibm' diversa bona &
 ' catalla que fuer' predict' Testatoris tempore
 ' mortis sue postea & ante diem impetrac' Bre-
 ' vis Original' ipsius Quer' Administravit, Abs.
 ' que hoc qd' predict' Testator per ult' volunt'
 ' suam

‘ suam. predict’ Quer’ Executor’ Testi’ sui
‘ tantum constituit, Et hoc, &c. Unde, &c.

‘ Precludi non, quia dic’ qd’ predict’ Testator
‘ per ult’ voluntat’ suam predict’ Quer’ Exec’
‘ Testi’ & ult’ voluntat’ suorum constituit
‘ prout per Breve & Narr’ sua predict’ superius
‘ suppon’, Et hoc pet’, &c. Vide Bro. Red.
‘ 200.

Repl’.

Note, That in 2 Saund. 210, &c. in an Bar, that
Action brought by the Plaintiffs as Executors, Two Execu-
the Defendant pleaded, That Two of the Exe- tors were un-
cutors were under the Age of Seventeen Years : der Age.
To which the Plaintiffs demurred; and the
Court held, that the Action was well brought
in the Name of all the Executors.

§. ‘ Et pred’ J. W. per C. D. Attorn’ suum Bar qd’ Ad-
‘ ven’ & defend’ vim & injur’ quando, &c. Et ministratio
‘ dic’ qd’ predict’ T. Actionem non, quia dic’ Quer’ nun-
‘ qd’ Administratio omnium & singulorum bo- quam fuit
‘ norum & catallorum que fuer’ predict’ R. commiss’.
‘ tempore mortis sue post mortem ejusdem R.
‘ prefat’ T. per predict’ D. F. nunquam com-
‘ missa fuit, Et hoc (&c.) Unde pet’ judic’ si
‘ Actio, &c.

‘ Precludi non, Quia dic’ qd’ Administratio Repl’ qd’
‘ omnium & singulorum bonorum & catallo- commiss’ fuit.
‘ rum que fuer’ predict’ R. tempore mortis
‘ sue per predict’ D. F. apud L. prefat’ T.
‘ commissa fuit prout ipse per narrationem
‘ suam predict’ superius suppon’, Et hoc pet’
‘ qd’ inquiratur per Patriam, Et predict’ J.
‘ similiter. Ideo precept’ est Vic’ qd’ Venire
‘ fac’, &c. Vide Bro. Vad. 228. Vide Clerks
‘ Assist. 117. 3 Brownl. 138. Ast. 286.

Aliter,

¶ ' Action' non, &c. quia dic' qd' Admini-
 ' stratio bonorum & catallorum que fuer' pre-
 ' dict' Testatoris tempore mortis sue post mor-
 ' tem predict' Testatoris presat' D. per predict'
 ' Ordinar' nec per aliquem al' Ordinar' un-
 ' quam commissa fuit, Et hoc, &c. Unde, &c.
 ' *Thomps. 427. nu. 34.*

Repl'.

' Precludi non, quia dic' qd' Administratio
 ' bonorum & catallorum que fuer' predict' Te-
 ' stator' tempore mortis sue per predict' Ord-
 ' nar' apud E. predict' (presat' D.) commissa
 ' fuit, modo & forma prout predict' Quer' su-
 ' perius vers' eum queritur, Et hoc pet' qd'
 ' inquiratur per Patriam, &c.

*Narr' by R. and J. Executors of K. Exe-
 cutrix of H. S. her Husband. Defendant
 pleads, that H. died intestate, and tra-
 verses that he made K. Executrix.*

Bar & Tra-
verse.

¶ ' **E**T predict' T. P. per J. D. Attorn'
 ' suum ven' & defend', &c. Et dic' qd'
 ' predict' R. & J. Action', &c. habere non
 ' debent, quia dic' qd' predict' H. S. apud L.
 ' predict' obiit intestat', Absque hoc qd' pre-
 ' dict' H. constituit predict' K. fore Executric'
 ' Testi' & ult' voluntat' sue prout predict'
 ' R. & J. per narr' suam predict' supposuer',
 ' Et hoc, &c. Unde, &c.

Repl' sur
Traverse.

' Et predict' R. & J. dic' qd' ipsi per ali-
 ' qua, &c. Precludi non debent quia ut prius
 ' dic', Qd' H. constituit predict' K. fore Exe-
 ' cutric' Testi' & ult' voluntat' sue prout
 ' iidem R. & J. superius narrando allegaver',
 ' Et hoc pet', (&c.) Ideo Jur', &c. Vide
 ' *Rob. Ent. 209.*

¶ Sur

ff. Sur Error in Debt in B. R. by Baron & Feme, Administratrix de bonis non, against an Executrix: After special Imparlance she pleaded, That such a Day Administration was committed to her by the Vicar-General, and Official of the Bishop of D. Secund' 1 Lut. 890. And the Judgment in Banco Regis was affirm'd, because the Defendant had not travers'd, that she had not administred any Goods before Letters of Administration was granted to her.

Executrix pleads she was Administratrix, but omitted a Traverse.

In Debt upon a Bond by an Executrix: Defendant pleads in Abatement, That the Testator was an Alien.

Q. 'A'ction' non, &c. quia dic' qd' pre- dict' S. Alienigena fuit in Regno Francie sub regimine Regis Gallie Inimic' Domini Regis Angl' de patre & matre & eidem Adversario suo Adherentibus oriundus & ingressus fuit Regnum Angl' absque conductu ipsius Domini Regis, Et hoc, &c.

Bar.

'Qd' predict' S. predict' tempore consecution' script' Obl' predict' & semper postea usque ad mortem ipsius S. fuit & remansit in Angl' & Licenc' & Protection' Domini Regis nunc scilt' apud L. &c. Et hoc, &c. Unde pet' Judic' & quod predict' R. ad Breve & Narr' suam predict' respondeat, Def' moratur generalment. Judgment Qd' respond' ouster, because it did not appear but that the Testator might come into England in Time of Peace, and had all the Time afterwards quietly continued; which, by the Chief Justice, amounted to a Licence. 1 Lut. 34, &c. Vide Doct' demurr' 248, 249.

Repl', Per Licenc' Domini Regis.

Demurr' & Respond' ouster agard.

Debt per Administrator sur Obl'. *Abatement, that as well the Two others named in the Bond, as the Defendant, obliged themselves jointly. 1 Lut. 605, &c.*

Bar in Abatement.

¶ *Q*uibus lectis & auditis idem W. C. pet' judic' de Brevi & Narr' predict', quia dic' qd' tam predict' H. C. & S. T. in script' Obl' predict' nominat' quam predict' W. C. predict' 30 die Jan. Anno Domini 1682. supradict' in narr' predict' menc' per scriptum Obl' predict' tam sigillis H. & S. quam sigillo ipsius W. C. signat' & tam per predict' H. & S. quam per ipsum W. C. tunc & ibm' execut' concesser se teneri p'fat' G. S. conjunctim tantum videlicet apud Castrum E. predict' in Com' E. predict', Et non seperatim, Et hoc parat' est verificare, Unde ex quo predict' H. & S. non nominantur in Brevi & Narr' predict' idem W. C. pet' judic' de Brevi & Narr' ill', Et qd' Breve & Narr' ill' cassentur, &c.

Quer' Demurr', & Judic' qd' respond' ouster.

Quer' demurr', and Judgment Qd' respond' ouster; for that it did not appear that the Obligor, or one of them, was alive at the Time of the Original purchased. Then Defendant pleaded the same Matter in Bar, with an Averment of their being alive: But it was not allowed to be pleadable in Bar.

Abatement per auter Action pendant al Nar' per Exec'.

¶ Debt for Rent by an Executor of an Assignee, against an Assignee of a Lease, rendering Rent. Plea in Abatement *per auter Action pendant* as to Part, and Demurrer as to the Residue. *Repl', Per nul tiel Record', and Joinder in Demurrer to the Residue. Rejo', Qd'*

Qd' est tiel Record', Et failer inde. Et Judic' pro Quer', 1 Lut. 643, &c.

ff. Debt for 553 l. per Baron' Adm' of his Wife, upon an Indenture. *Bar per non est factum*, and Issue thereupon, and Verdict for the Plaintiff; and excepted in Arrest of Judgment, 1. That the Action is brought for 553 l. whereas it appears that 556 l. was due, &c. 2. That the Declaration is by Way of *Testatum*, &c. 3. That it is alledged, that Administration was granted to the Plaintiff at York by the Archbishop of C. which is out of his Province. *Sed non allocantur.* 1 Lut. 533, &c.

Exceptions to a Narr' per Baron Administrator of his Wife.

ff. Debt upon a Bond by the Administratrix of F. P. which upon Oyer appear'd to be a Bail Bond. The Defendant pleaded the Statute of 23 H. 6. in Bar; and that a Writ was sued out, which did not warrant the Bond. *Repl'*, by which the true Writ is shewn to warrant the Bond; and that at the Time of making the Bond, the said G. L. was in Custody of the Intestate by Vertue of the last Writ. And upon Demurrer the Opinion of the Court was against the Plaintiff, for that the Writ and Count in this Case were ill, because F. P. to whom the Plaintiff is Administratrix, was not therein named. *Nuper Vic' Com' Salop, &c. Vide 1 Lut. 619, &c.*

Action brought by an Executrix upon a Bail-Bond, and Intestate not named.

Bar

Bar against Executors and Administrators mentioned in the Fourth Part of Instructor Clericalis, &c.

Maintenance. *§.* **B**AR by Maintenance betwixt the Plaintiff and his Intestate. 4 *Instructor Clericalis* 57.

Against an Administrator upon Articles of Covenant.

Bar.

§. **D**Ebt by an Administrator to perform Articles upon a Covenant to pay 10*l.* yearly to the Wife during Life, in lieu of her Thirds. Bar by Performance of Covenants generally. Repl', and Breach that 5*l.* was due to her, 25 *Martii*; and that the Wife was living after the 25th of *March*, &c. and the Money not paid. Defendant demurs, *cum notis*. *Id.* 114.

Against an Administrator durante Minoritat'.

§. **A**ction by an Administrator *durante Minoritate* *W. R.* against an Executor for Rent *sur* Covenant. Bar, That after the last Continuance the said *W. R.* attained his Age of Twenty one, *cum notis*. *Id.* 119, &c.

Against

Against an Executor of an Executor of Assignees.

§. **T**HE Action was Debt for 550*l.* Rent, by an Executor of an Executor of Assignees, upon an Assignment to them of the whole Term, which the Assignors had in the Park assigned. Defendant pleads, he was ready upon the Land before Sun-set to pay the Rent. Plaintiff demurs specially, *cum notis.* Ready to pay upon the Land, &c.
Id. 133, &c.

Against an Administrator upon Covenant to pay to the Intestate after her Marriage, &c.

§. **B**A R *per non est factum*, to Debt upon an Indenture for 553*l.* brought by an Administrator upon a Covenant to pay to the Intestate 200*l.* within Three Months after her Marriage, if she should be then alive, and 200*l.* more within Two Years after her Marriage, if she, or any Issue of her Body, should be then alive, with Interest for the said 400*l.* with Averment. That she was married 16 *Maii* 1670. and Notice to the Defendant; and Averment, That she lived Five Years after her Marriage, with a Computation of the Interest and Sum *in toto.* Verdict *pro Quer'*, and Motion in Arrest of Judgment, with Exceptions made. *Id.* 141, &c.

Sur

• *Sur Action per Admin. Bar, Qd' Def ipse est Executor simulcum T. B. Et traverse, Qd' J. obiit Intestat'.*

Bar.

¶ *ET* predict' T. S. per R. C. Attorn'
 ' suum ven' & defend' vim & injur'
 ' quando, &c. Et dic' qd' predict' M. L.
 ' Action' non, Quia dic' qd' predict' A. B. in
 ' Billa predict' superius nominat' Languens in
 ' extremis & compos mentis existen' post con-
 ' fection' script' Obl' predict' (scilt' tali Div &
 ' Anno) apud L. pred' in Paroch' & Ward
 ' pred' condidit testamentum & ult' voluntat'
 ' sua in scriptis, Et per eadem constituit & or-
 ' dinavit ipsum T. S. & quendam H. B. ge-
 ' jam' defunct' Executores Testi' sui pr-
 ' dict' qui quidem H. B. simulcum predict'
 ' T. S. administravit diversa bona & catalla
 ' que fuer' predict' J. B. tempore mortis sue vi-
 ' delt' apud L. predict' in Paroch' & Warda
 ' predict', Absque hoc qd' predict' J. obiit in-
 ' testat' prout predict' M. per Billam suam
 ' predict' superius suppon', Et hoc parat' est
 ' verificare, Unde pet' judic' si predict' M.
 ' Action' suam predict' inde vers' eum habere
 ' seu manutenere debeat, &c. Vide *Thompso*
 ' *Ent. 140.* Vide postea.

¶ Debt by an Executor of *A* upon a Bond made to him and *D.* Bar, Qd' *D.* survive *A.* Vide *Placit. Gen. 293, &c.*

Where one
Plaintiff or
Defendant
dies.

See Stat. 8 & 9 W. 3. cap. 11. where if there be Two or more Plaintiffs or Defendants, and one die, the Action shall proceed. See also at the Beginning of this Division, Bar al *Suit de Executors, &c.*

Aliter secund' Rast. vers' Exec' pretens' survivor' W. A. un' obligee. Bar, Qd' W. G. supervixit W. A. Et traverse qd' W. A. supervixit.

J. ' ET predict' V. per T. C. Attorn' suum ven' & defend' vim & injur', &c. Et dic' qd' Bar.

' predict' J. Action' non, quia dic' qd' ubi per Narr' predict' supponitur pefat' W. A. supervixisse pefat' W. G. idem V. dic' qd' predict' W. A. obiit 20 die F. Anno, &c. apud P. in Com' D. Et predict' W. G. ipsum W. A. supervixit. Et idem W. G. postea scilt' die, &c. Anno, &c. apud P. predict' obiit, Absque hoc qd' predict' W. A. supervixit pefat' W. G. prout per Narr' predict' superius supponitur, Et hoc, &c. Unde, &c.

' Precludi non, Quia dic' qd' predict' W. A. supervixit pefat' W. G. prout idem J. per Narr' suam superius suppon', Et hoc pet. qd' inquir' per Patriam, Et predict' V. similis, Ideo xii. &c. Repl'.

Note, That upon a Bond by one after he had attained his full Age (where Administration was committed to others during his Minority), Defendant pleads, That the Administrator duran' minor' etat' released to him. Repl', That Administration was committed to the sole Use and Benefit of the Plaintiff, who was an Infant. Rejoinder, That it was committed to the proper Use of the Administrator. Et de hoc pon' se super Patriam, Et predict' R. similis &c. Vide Thomps. Ent. 141. Et vide postea.

Bar, Quod Adm' duran' Minor' etat' relaxavit.

In Debt by an Executor. Bar, That the Testator by another later Will made the Defendant his Executor, and Issue thereupon. Secund. Rast. 323. b.

J. ' ET predict' A. ven' & dic' qd' Action' non, Bar. quia dic' qd' predict' R. post confection' Litterarum testamentar' predict' apud W. in Com' predict' pro ult' voluntat' sua condidit al Testam' ment'

Repl.

ment' suum & Testament' illius ipsum A. Executor-
rem constituit & postea ibm' obiit, Post cujus mor-
tem Testament' illud ut ult' voluntas coram Magi-
stro S. Arch. B. cujus ejusdem Testatori probatio
pertinuit canonice probatum fuit, Et bonorum ipsius
R. eidem A. ut Executori Testi' ill' Administratio
commissa fuit, Et hoc, &c. Unde, &c.

Et predict' C. dic' qd' ipse per aliqua, &c. Pre-
cludi non debet, Quia dic' qd' predict' R. pro ulti-
ma voluntat' sua fec' predict' Litteras Testamentar'
pro ipso C. in manutentionem Actionis sue pro-
lat' per quas Cur' hic satis liquet ipsum C. solum
Executor earum Litterarum Testamentar' esse & bo-
norum suorum habere Administrationem quarta die
J. anno, &c. Absque hoc qd' predict' R. post con-
fectionem earundum Litterarum Testamentar' fec'
aliud Testum' prout predict' A. superius allegavit.
Et hoc, &c. Unde, &c.

Rejo.

Et predict' A. dic' qd' pefat' R. post confection'
predict' Litterarum Testar' per predict' C. in manu-
tencon' Action' sue predict' prolat' fecit aliud Testum'
predict' prout idem A. superius allegavit, Et de
hoc, &c. Ideo 12. &c.

Bar, That J.
had obtain'd
his Age, and
took Admini-
stration upon
himself, &c.

Nota, Sur Obl' per Exec', Bar qd' Testator, fec'
Def, & 3, al' Exec' duran' minori etate J. qui ante
Breve Original' implevit etatem, Et tunc Def' de-
liberavit ei bona & catalla defuncti que J. recepit,
& onus Executionis ut Exec' suscepit, Et traverse
qd' Def' Die Original' vel unquam postea fuit Exec'
vel aliqua bona Testator' unquam postea Administ'
Demur' special' ad inde, Eo qd' Traversia conti-
net, &c. *Winch. Ent. 353.* Cum nota.

The End of the First Volume.



